

# ORIGINAL

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the matter of:

LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station  
Unit 1)

Docket No. 50-322-OL-1

Location: Hauppauge, New York Pages: 12,573-12,841

Date: Thursday, 12 July 1984

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*Original to R. Pleasant  
H-1149*

*3 additional to ASLBP*

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UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of: :  
: :  
LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-3  
: (Emergency Planning  
(Shoreham Nuclear Power Station, : Proceeding)  
Unit 1) :  
-----X

Court of Claims  
State of New York  
State Office Building  
Room 3B46  
Veterans Memorial Highway  
Hauppauge, New York 11787

Thursday, July 12, 1984

The hearing in the above-entitled matter  
convened, pursuant to recess, at 9:31 a.m.

BEFORE:

JAMES A. LAURENSEN, ESQ., Chairman  
Atomic Safety and Licensing Board  
Nuclear Regulatory Commission  
Washington, D. C. 20555

DR. JERRY KLINE, Member  
Atomic Safety and Licensing Board  
Nuclear Regulatory Commission  
Washington, D. C. 20555

DR. FREDERICK SHON, Member  
Atomic Safety and Licensing Board  
Nuclear Regulatory Commission  
Washington, D. C. 20555

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APPEARANCES:

2

On Behalf of LILCO:

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KATHY E. B. MC CLESKEY, ESQ.  
Hunton & Williams  
Main Street  
Richmond, Virginia

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On Behalf of the NRC Staff:

7

BERNARD BORDENICK, ESQ.  
Office of the Executive Legal Director  
U. S. Nuclear Regulatory Commission  
Washington, D. C. 20555

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On Behalf of Suffolk County:

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CHRISTOPHER M. MC MURRAY, ESQ.  
MICHAEL S. MILLER, ESQ.  
Kirkpatrick, Lockhart, Hill, Christopher & Phillips  
1900 M Street, N. W.  
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On Behalf of the State of New York:

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RICHARD J. ZAHNLEUTER, ESQ.  
Special Counsel to the Governor  
Executive Chamber  
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State Capitol  
Albany, New York 12224

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On Behalf of FEMA:

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STEWART M. GLASS, ESQ.  
Regional Counsel  
Federal Emergency Management Agency  
26 Federal Plaza, Room 1349  
New York, New York 10278

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C O N T E N T S

WITNESS

DIRECT   CROSS   REDIRECT   RE CROSS

|                    |        |
|--------------------|--------|
| Thomas E. Baldwin  | 12,504 |
| Joseph H. Keller   |        |
| Roger B. Kowieski  |        |
| Philip H. McIntire |        |

E X H I B I T S

MARKED FOR IDENTIFICATION   RECEIVED

|                        |        |
|------------------------|--------|
| Suffolk County Exhibit | 12,641 |
| Nos. EP 76 through 90  |        |

P R O C E E D I N G S

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2 JUDGE LAURENSEN: The hearing is reopened at this  
3 point.

4 For the record, we spent the last half four  
5 discussing scheduling matters and other problems concerning  
6 the conduct of the hearing.

7 The parties have indicated that they will discuss  
8 some of these matters among themselves. However, the  
9 parties have agreed upon the order of proceeding with the  
10 remaining contentions and testimony.

11 So I think at this point, Ms. McCleskey wishes  
12 to put that in the record.

13 MS. MC CLESKEY: Yes, sir. The previous  
14 agreement was that following the FEMA witnesses this  
15 week, if there were time to hear LILCO's panel on 92,  
16 we would do so. If we do not hear 92 this week, we will  
17 begin Tuesday, July 17, first thing, with the Suffolk  
18 County training panel, followed by LILCO 81, LILCO 24.R, if  
19 LILCO 81 is completed during the day of Wednesday, July 18,  
20 and LILCO 77, if LILCO 81 is not completed during the day  
21 on Wednesday, July 18, followed by LILCO 24.R; LILCO 92, if it  
22 is not heard this week, LILCO 33, LILCO 49, LILCO 85,  
23 LILCO 88, Suffolk County on 85 and 88; and then, depending  
24 upon the outcome of various motions that are pending,  
25 Suffolk County supplemental training testimony, LILCO

1 on 24.0, 74 and 75, and Suffolk County on 74 and 75.

2 Following a two-week recess, we would reconvene  
3 on August 13 or 14 with the FEMA witnesses, followed by  
4 LILCO 16.E, which is the brochure, Suffolk County 16.E,  
5 if testimony is filed by Suffolk County, the staff testimony  
6 on contention 11, and whatever remaining pieces have not  
7 been heard previously.

8 JUDGE LAURENSEN: Does this represent the  
9 agreement of the parties?

10 MR. MC MURRAY: We agree with that, Judge  
11 Laurenson. We just want to note for the record that  
12 we don't think that Suffolk County supplemental  
13 training testimony or the relocation center testimony  
14 will be able to be heard in this three-week period just  
15 because we are going to run out of time and that the  
16 likely schedule is that it will be heard after --  
17 well, during the next three-week session in August.

18 JUDGE LAURENSEN: Let me just raise the  
19 question of why, assuming we admitted the Suffolk County  
20 training testimony, why wouldn't it be heard next week,  
21 when the rest of the training testimony is coming in?

22 MS. MC CLESKEY: We hadn't discussed that  
23 possibility, but it certainly makes sense. And that would  
24 be fine with LILCO.

25 MR. MC MURRAY: That would be fine with the

1 county, too.

2 JUDGE LAURENSEN: We have reviewed the county's  
3 motion to admit the supplemental training testimony and  
4 the LILCO response which was filed yesterday, and we  
5 hope to have a ruling on that for you by the end of  
6 today.

7 So to the extent that, if we agree to allow  
8 any of that, then perhaps that could be scheduled next  
9 week. But I am just raising that as a question.

10 I didn't understand if there was some reason  
11 not to have that testimony presented when the rest of  
12 the county's training testimony comes in.

13 MR. MC MURRAY: Frankly, I think we just didn't  
14 think of it, Judge Laurenson.

15 JUDGE LAURENSEN: Okay.

16 This brings us then to the -- let me make  
17 sure I get everybody else on board. Do all the other  
18 parties agree to this schedule as announced by  
19 Ms. McCleskey?

20 MR. ZAHNLEUTER: The state agrees with the  
21 schedule, except that I note that the relocation center  
22 testimony has not had a decision on pending motions yet.

23 JUDGE LAURENSEN: That is what we are going to  
24 hear this morning.

25 MR. ZAHNLEUTER: Right.

1 JUDGE LAURENSEN: We will decide that today also.

2 MR. BORDENICK: The staff agrees with the  
3 schedule. I just need to interject that the precise --  
4 I am sure the parties can work out the precise scheduling for  
5 the staff's testimony on contention 11; since I don't know  
6 yet who the witnesses will be, I don't know what potential  
7 conflicts they might have with any given hearing day. But  
8 I am sure the parties can work it out ahead of time.

9 JUDGE LAURENSEN: Okay.

10 This brings us then to the LILCO motion for  
11 additional time for discovery and to file a motion to  
12 strike the county's revised testimony on contention 75,  
13 the relocation centers.

14 As we indicated, this would be submitted on  
15 oral argument today, except for LILCO which has, of course,  
16 filed a written motion and its brief.

17 So at this time we will hear from the county.

18 MR. MC MURRAY: Thank you, Judge Laurenson.

19 On June 8, this Board set a schedule for  
20 further proceeding on the relocation center testimony.  
21 Both parties filed their testimony according to the Board's  
22 schedule and the county filed its motion to strike  
23 according to the Board's schedule.

24 LILCO's motion to strike was due last Friday, but  
25 LILCO chose not to file that motion to strike. Rather, it



1 filed the motion that we are considering right not.

2 LILCO's reason for filing the motion, the  
3 underlying reason, is that two of the relocation centers  
4 on which it was apparently relying in its plan are  
5 no longer available to it, and LILCO is asking for  
6 essentially a stay of the proceedings with respect to the  
7 relocation center issues while it has an opportunity  
8 to pursue discovery which will then form the basis for  
9 a decision on their part as to whether or not to file motions  
10 to strike the county's testimony.

11 Obviously the county opposes this unprecedented  
12 motion. LILCO's problem is one that has been raised  
13 before in this proceeding, mostly by the county. That is,  
14 that LILCO is confronted with changed circumstances and it  
15 needs time to get its act together in order to fix  
16 those circumstances because obviously it can't sustain  
17 its burden of proof right now if it had to go forward on  
18 this issue.

19 LILCO's predicament brings to mind the county's  
20 own predicament during the course of these proceedings.  
21 Suffolk County has also been confronted with changed  
22 circumstances. Most notably when it has been confronted  
23 with revisions to the LILCO plan.

24 That issue just came up this week. The  
25 county received revision 4 last Tuesday and filed a motion

1 for a stay of these proceedings so that it could have  
2 time to evaluate the changed circumstances to see whether  
3 circumstances had changed, to see how the revision affected  
4 its testimony and affected its contentions, and so that  
5 the county could then determine whether or not it was  
6 going to file supplemental testimony.

7 The Board was unsympathetic, to say the least.  
8 Of course, we don't agree with the Board's ruling, but we  
9 have to live with it. The Board's basic position was that  
10 the county, that's too bad. That is life in the fast  
11 lane. We are dealing with a moving target and you have  
12 got to be able to hit it.

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1 LILCO can't be treated differently. Changed  
2 circumstances that LILCO has to confront don't warrant  
3 special treatment of LILCO. The County has always been  
4 told it has to hit a moving target, and it is no reason why  
5 that target should be held still for LILCO to hit it.

6 The request for time to conduct discovery in this  
7 proceeding so that a party can file a Motion to Strike or  
8 figure out whether it wants to file a Motion to Strike is  
9 unprecedented in this case. Their Motion to Strike was due  
10 last Friday. LILCO chose not to file, and it shouldn't be  
11 given more time. And what good would discovery do?

12 Those letters that are in the County's testimony  
13 are plain on their face. They set forth the immutable  
14 fact that those two relocation centers are not available to  
15 LILCO for use in its Plan. That fact will not change, no  
16 matter how much discovery LILCO conducts.

17 Furthermore, I don't understand how LILCO can say  
18 that discovery might enable it to make some sort of argument  
19 that the County's testimony should be stricken because it  
20 lacks foundation. These two letters are exactly the kinds  
21 of letters that LILCO has had admitted into the record over  
22 the County's and State's objection.

23 The County objected before that the letters that  
24 were introduced -- at least the initial letter between the  
25 State of Connecticut and the State of New York -- were not

1 letters that involved LILCO witnesses, or witnesses that we  
2 were able to cross examine, and therefore there was no  
3 foundation. The Board, in any event, let those letters into  
4 the record.

5 The situation here is no different.

6 JUDGE LAURENSEN: Well, these letters aren't  
7 really addressed to any of your witnesses though, are they?

8 MR. McMURRAY: Neither was that first -- or  
9 LILCO 48. It was between the State of New York and the  
10 State of Connecticut.

11 JUDGE LAURENSEN: But it was addressed to a  
12 party to the case. In this instance, we have letters addressed  
13 apparently to the red cross, which is not a party to this case,  
14 and it is just a question about the foundation for Dr. Harris  
15 and Dr. Mayer, how can they sponsor these exhibits when they  
16 do not even appear as people receiving copies of these  
17 letters.

18 MR. McMURRAY: Well, they did receive copies of the  
19 letters. Obviously the County was given these letters. How  
20 is that any different -- the fact that there is a c.c. put  
21 on the bottom I don't think changes whether or not a person  
22 can put into the record -- apparently it is the Board's ruling  
23 on the foundation that needs to be shown for exhibits of this  
24 sort -- whether or not a letter like that should be put in.

25 JUDGE LAURENSEN: This is a little bit different

1 I think, aren't they, Mr. McMurray? These were drafted  
2 after the LILCO testimony was filed. They are almost  
3 identical in their format. It looks like they were written  
4 by the same person as far as I can tell, and they cite the  
5 political or governmental concerns of the Governor of the  
6 State of New York, and yet it is not the State of New York  
7 that is sponsoring any of these exhibits. It is the County.

8 Isn't that an unusual situation?

9 MR. McMURRAY: I don't understand the unusualness.  
10 The fact is that these relocation centers are not going to  
11 be available. No amount of discovery is going to change  
12 that fact, and even if the Board doesn't admit the letters,  
13 that fact isn't changed.

14 Now, it seems to me that these witnesses are just  
15 as qualified to submit letters that they have received, and  
16 I don't think there has been any question about the authenticity  
17 of these letters. They are just as qualified as LILCO's  
18 witnesses are to introduce letters between the State of New  
19 York and the State of Connecticut. I just don't see the  
20 difference.

21 The fact that they may appear to have been written  
22 by the same person also doesn't make any difference.

23 JUDGE LAURENSEN: There is a slight difference,  
24 in that none of the parties to those letters are parties in  
25 this case.

1 MR. McMURRAY: I don't understand.

2 JUDGE LAURENSEN: The letters between New York  
3 and Connecticut, Mr. Zahnleuter here is representing the  
4 State of New York, and the State is a party to the letter  
5 and is a party to this proceeding.

6 Here, we have letters between the BOCES and the  
7 State University and the Red Cross.

8 MR. McMURRAY: First of all, these are State  
9 facilities, so these letters do come from administrators  
10 of State facilities.

11 JUDGE LAURENSEN: Let me ask you this --

12 MR. McMURRAY: But the fact is, Judge Laurenson,  
13 that these relocation centers are just not going to be  
14 available. That is the point that is being made.

15 JUDGE LAURENSEN: I guess this goes to the question  
16 that the Board has, and I might as well put it on the table  
17 right now. Isn't this an example of what I think the prior  
18 Board talked about, the County's own doing? That this  
19 amounts to some sort of active undermining of the LILCO Plan,  
20 and that is, that the County, in effect, is using its power,  
21 or the State is using its power in conjunction with the  
22 County to take away from LILCO facilities that would otherwise  
23 be available.

24 The letters on their face indicate that these  
25 facilities are available for emergencies other than radiological

1 emergencies at Shoreham.

2 Doesn't that put this whole matter in a different  
3 light?

4 MR. McMURRAY: Just one second, Judge Laurenson.

5 (Counsel confer)

6 MR. McMURRAY: Judge Laurenson, I think the Board  
7 somehow thinks that these relocation centers were suddenly  
8 taken away from LILCO. The fact is that these relocation  
9 centers were never available to LILCO, although LILCO  
10 thought they were.

11 I think the letter from SUNY -- well, from one  
12 of the facilities, said that they knew of no agreement with  
13 Suffolk County -- with the red cross regarding any emergency.

14 And I believe the other letter said that their  
15 agreement with the red cross did not cover radiological  
16 emergencies, and they didn't understand it to cover radio-  
17 logical emergencies.

18 So, this is not just a case of the County's own  
19 doing. And, Judge Laurenson, the plain fact is LILCO doesn't  
20 have relocation centers that can be relied upon. The LILCO  
21 Plan contemplates that there has to be relocation centers.  
22 Identified relocation centers to send people to, and those  
23 relocation centers that are identified are not available,  
24 and therefore LILCO can't meet its burden.

25 I think also that with respect to these other

1 letters -- well, this also brings to mind the case of 24.R,  
2 where LILCO was able to get in some letters.

3 If I asked the Board whether it would seriously have  
4 considered a Motion to stay the proceedings while it conducted  
5 discovery in order to figure out whether or not there was  
6 a proper foundation for the admission of the letters, I  
7 don't think the Board would have granted that Motion. I think  
8 it is the same position here, and that these proceedings should  
9 not be stayed.

10 The Board has said we are on the fast track. We  
11 are going to get this case over by August. I don't see why  
12 LILCO should be treated differently.

13 JUDGE LAURENSEN: Let me ask if the authors of  
14 these two letters are available to testify here when this  
15 matter comes up.

16 MR. McMURRAY: I don't know. Of course, LILCO  
17 can always apply for a subpoena.

18 End 2.  
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JUDGE LAURENSEN: I think that the LILCO motion -- we maybe put two things together, but we are talking about it in light of your revised testimony and, of course, you are going to be asking the Board to accept in evidence these two letters that you have attached to your revised testimony, so we are trying to find out if there is some method for dealing with this other than what LILCO has asked for, frankly, and that is for a delay in the depositions and so forth. We have had enough problems with discovery while the hearing is running its course. I think we are looking for some other method.

On the other hand, it does appear that this was a last minute effort, where these two letters are dated after LILCO had filed its testimony on relocation centers, and we think that fairness requires that at least LILCO have some opportunity to question these witnesses. And one way would be to bring the authors of the letters into court here and let them testify as to the concerns that LILCO has raised.

I'm just putting that out on the table as a possible means for dealing with the situation.

MR. MC MURRAY: Well, you know, the County has also been confronted several times when after it has submitted its testimony it has been given new revisions, or it has been given new hospital plans. It has been given all sorts of things that have affected its testimony. And the Board

#3-2-SueT

1 has not been sympathetic to the County's requests for time  
2 to conduct meaningful discovery or to determine how that  
3 new material affects testimony. And I just don't think  
4 that the Board can apply two standards.

5 JUDGE LAURENSEN: Does the State have a position  
6 on this?

7 MR. ZAHNLEUTER: Yes, sir. The State opposes  
8 LILCO's motion.

9 It is an irony of the highest order for LILCO to  
10 plead for additional time in which to pursue discovery when  
11 LILCO has done absolutely nothing to pursue discovery in the  
12 last two weeks. LILCO admits in Footnote 3 of its motion  
13 that LILCO received the letters in question on Wednesday,  
14 June 27th.

15 And then nine days later on July 6th, on the last  
16 day in which to file motions to strike, LILCO filed its  
17 pleadings seeking additional time. In those nine days,  
18 counsel for the State did not receive any document requests  
19 from LILCO. Counsel for the State did not receive any re-  
20 quests for depositions from LILCO. And counsel for the  
21 State did not receive any inquiries at all from LILCO concern-  
22 ing discovery.

23 The same is true for the period of six days from  
24 July 6th to today, July 12th. Earlier this week, the Board  
25 denied the County's motion to seek discovery concerning the

#3-3-SueT 1

2 FEMA testimony. The Board ruled that because the County  
3 waited one week after the last deposition to file its motion,  
4 the motion was inexcusably late. The Board stated that the  
5 untimeliness of the motion was sufficient cause to deny it.  
6 And that discussion appears at the Transcript Page 12,129.

7 In addition, earlier this week the State objected  
8 to the Board's decision to require oral argument on this  
9 matter during this week. The State preferred to respond in  
10 writing and in accordance with the time periods set forth in  
11 10CFR, Sections 2.730 and 2.710. However, the Board stated  
12 that its decision was necessary to expedite the process.  
13 And that discussion occurs at Transcript Page 12,095.

14 Obviously the Board is very much concerned about  
15 utilizing all available time at this stage of the proceedings.  
16 However, LILCO has utterly wasted the past two weeks. LILCO  
17 could have pursued discovery but LILCO neglected to do just  
18 that.

19 In the interest of fairness and equal treatment,  
20 the rigid time demands and expectations which have been im-  
21 posed upon the State and the County should also be imposed  
22 upon LILCO. LILCO seeks a time extension of one week and  
23 five days from the date of the Board's decision. If LILCO  
24 had prudently used the time which it wasted in the last two  
25 weeks, it would not have needed a twelve day time extension.

At this point, I would like to make several comments

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1 concerning the specific contents of the LILCO motion itself.  
2 First, it is necessary to define exactly what LILCO's plead-  
3 ing is and what it is not. The pleading is a motion to  
4 grant LILCO an extension of time to file a motion to strike.  
5 Second, the pleading is a motion to stay any decision by  
6 the Board until LILCO files its motion to strike. Third,  
7 the pleading is not a motion for the Board to issue sub-  
8 poenas to Dr. Cipriani or Mr. Hines. The pleading is not a  
9 motion to compel the State or the County to produce docu-  
10 ments. The motion is also not a motion to strike.

11 No underlying discovery request exists at this  
12 time. Accordingly, I will restrict my comments to the issue  
13 of whether LILCO should be granted additional time in which  
14 to file a motion to strike. I will note, however, that  
15 LILCO's indication that it apparently intends to seek dis-  
16 covery at this late and tense stage of the proceedings is  
17 prejudicial to the State and would cause extensive hardship.

18 Turning to Pages 3 and 5 of the LILCO pleading,  
19 LILCO asserts that the two facilities in question have been  
20 discussed extensively in LILCO's testimony and that it has  
21 been known for two months that SUNY Farmingdale was a primary  
22 relocation center rather than a secondary relocation center.  
23 These claims are untrue.

24 The portions of LILCO's testimony which are direct-  
25 ed towards SUNY Farmingdale and BOCES II only make passing

#3-5-SueT 1 references to the distance of the facilities from Shoreham  
2 and the general capacities of the facilities. That is the  
3 meager extent to which the two facilities are discussed.

4 In addition, it was not until June 15th that  
5 LILCO officially amended its testimony to change its  
6 designation of SUNY Farmingdale to a primary relocation  
7 center. Much doubt clouded the state of affairs prior to  
8 June 15th.

9 LILCO claims that there has been no suggestion  
10 that either SUNY Farmingdale or BOCES II would not be  
11 available for use until LILCO received the June 21st letters.  
12 But quite to the contrary, Mr. Palomino and I have consis-  
13 tently stated that the Governor's position is that the State  
14 opposes the issuance of an operating license based on the  
15 LILCO plan, and that the State will not participate in  
16 LILCO's plan. Under these circumstances, if LILCO continues  
17 to rely upon two State facilities such as SUNY Farmingdale  
18 and BOCES II as relocation centers then LILCO does so through  
19 its own foolishness and at its own peril.

20 On Page 6 of LILCO's pleading, LILCO claims that  
21 there is no foundation for the letters because the County's  
22 witnesses' testimony does not reveal all of the reasons for  
23 sending the letters. It is important to point out that the  
24 County witnesses are testifying as to the assertions con-  
25 tained in the letters, namely that the facilities are not

#3-6-SueT

1 available. The County's witnesses are not offering testi-  
2 mony as to the underlying reasons for the assertions. The  
3 situation is the same as when the LILCO witnesses take the  
4 stand and testify to nothing more than that letters of  
5 agreement between relocation centers and the Red Cross  
6 supposedly exist.

7 I note that LILCO has offered no witnesses from  
8 the Red Cross. And along the same vein, when LILCO intro-  
9 duced letters of agreement between the United States Coast  
10 Guard, from hospitals, from several other facilities, LILCO  
11 did not offer those people either. It would have been an  
12 accommodation to the State and the County, which are both  
13 joint intervenors in this proceeding, to have the right to  
14 cross-examine those people. But those people were not  
15 present to testify and yet the Board did admit those letters.

16 Apparently the Board overcame a concern of hear-  
17 say and admitted the letters despite the lack of appearances  
18 from the Coast Guard and from the other people who had  
19 written letters.

20 In light of the fact that LILCO has wasted the  
21 last two weeks by not pursuing any discovery, LILCO's motion  
22 for an additional twelve days from the date of the Board's  
23 decision should be denied. In addition, LILCO should be  
24 deemed to have waived its right to file a motion to strike  
25 since no such motion was filed on or before the deadline of

#3-9-SueT

1 July 6th. The State respectfully urges that the Board deny  
2 LILCO's motion.

3 JUDGE LAURENSEN: Let me ask you, Mr. Zahnleuter,  
4 do you know whether these two witnesses, the authors of  
5 the letters in question, are available if we should find  
6 that their testimony would be needed?

7 MR. ZAHNLEUTER: Are available to testify in  
8 the proceeding?

9 JUDGE LAURENSEN: Yes.

10 MR. ZAHNLEUTER: Are you asking in terms of  
11 date availability or the general concept of availability?

12 JUDGE LAURENSEN: I guess general concept now,  
13 within the framework which we are talking about which  
14 obviously is the next six weeks.

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16 end #3

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1 MR. ZAHNLEUTER: I can't see any substantial  
2 reason why they would not be, understanding the general  
3 concept theory that I am working on. The specific dates  
4 of availability, I have absolutely no idea.

5 I do know that one is currently in Italy.

6 JUDGE LAURENSEN: Before we go to the staff,  
7 I just want to give LILCO an opportunity to respond to  
8 one new statement that I made here today that was not in  
9 the original motion. And that is, what is LILCO's  
10 position concerning a requirement that the authors of  
11 those two letters be here to supply the foundation in  
12 lieu of granting any of the relief that LILCO has  
13 requested in its motion?

14 MS. MC CLESKEY: Yes, sir.

15 I think that would substantially solve our  
16 foundation problems, but I am wondering whether it would be  
17 the most efficient way to deal with the new information  
18 that was contained in the letters.

19 The state of the record right now is LILCO's  
20 testimony coming in and claiming that it, through the  
21 Red Cross, does have agreements with the relocation centers.

22 The county has filed, with the attached letters,  
23 with no one to support them, that the relocation centers  
24 aren't available and that the agreements that we are  
25 relying upon don't cover a radiological emergency for



1 Shoreham.

2 If we bring in the two authors of the letters,  
3 presumably we could explore on the stand their knowledge  
4 about the letters, who wrote them, when this information  
5 reached them. But I am suspecting that the result of  
6 all that would be new information for LILCO and a motion  
7 to file supplemental testimony, for good cause, and we  
8 would, of course, accompany that with a motion showing a  
9 good cause.

10 If we went, instead, in the next week to  
11 being able to talk to the authors of the letters in  
12 depositions and find out what the situation is, we might  
13 be able to expedite, as I suggested in my motion, and in  
14 the five days additional following the deposition, file  
15 a motion to strike, if it was appropriate, or perhaps  
16 a motion requesting supplemental testimony and get all  
17 of that in during the August hearings and give the parties  
18 ample opportunity to pursue the supplemental testimony  
19 during the recess.

20 I must say that having the authors of the  
21 letters here would go a long way towards solving the  
22 foundation problems. I think it would be cleaner to do  
23 it through discovery.

24 JUDGE LAURENSEN: Mr. Bordenick?

25 MR. BORDENICK: Judge Laurenson, the staff has no

1 objection to the LILCO motion. We feel that they have  
2 made a showing of good cause for the relief sought and that  
3 they have requested such relief in a reasonable period of  
4 time.

5 I also believe that the arguments advanced by  
6 the county and the state this morning are largely irrelevant  
7 to the issues raised. I would just briefly note that  
8 if one construes LILCO's recent motion as a motion for  
9 a stay, which I certainly don't, but if one does construe  
10 it that way, it is certainly on a very, very limited  
11 basis as opposed to the county's motion. And it is based  
12 on good cause.

13 Obviously, the Board is aware that LILCO is  
14 the party that has the burden of proof in this room and the  
15 only party in this room that is not a governmental  
16 entity.

17 The filing of the motion, however, has created,  
18 at least for the staff, an additional procedural problem,  
19 although in my opinion relatively insignificant.

20 Unfortunately, with respect to the LILCO motion,  
21 which the Board is addressing this morning, and the county's  
22 motion to admit supplemental testimony on training, both of  
23 those motions were filed, I believe, on July 6, which was  
24 last Friday.

25 I was in my office on Friday of last week and

1 Monday of this week, and even though the certificates of  
2 service on both of those motions show hand delivery to  
3 the staff -- and I don't doubt that that is what was done --  
4 I personally did not receive copies of these motions, and  
5 I knew nothing about them until the Board mentioned them  
6 up here this week.

7 I would like to request in the future that if any  
8 party, in a situation where a return to the hearing is  
9 imminent, as was the case last Friday, is filing a motion  
10 and is planning to hand deliver it, that they give me the  
11 courtesy of also notifying me by telephone so that I  
12 can alert the appropriate people and make sure that I get  
13 it because it does work to my disadvantage, of course,  
14 to hear about things at the hearing and then have to go  
15 obtain copies in whatever fashion I can get.

16 In any event, at least as far as the LILCO  
17 motion is concerned, the procedural problem that it  
18 has created for the staff is that the staff has already  
19 responded in writing to the county's motion to strike the  
20 LILCO testimony.

21 I might add, we viewed that motion, in effect,  
22 in two parts. One was a motion to strike the testimony  
23 in its entirety, and one was to strike it in discrete parts.

24 As to the motion to strike it in its entirety,  
25 our filing opposed it. As to the motion to strike discrete

1 parts, we supported in part and opposed in part the motion.  
2 So that what I am suggesting this morning is that the  
3 fact is, as I understand it, our filing went out on  
4 Tuesday in response to the county motion to strike.

5 If the Board grants the relief that LILCO is  
6 seeking by virtue of this motion, which, as I said earlier,  
7 we fully support, the staff would like to reserve the  
8 opportunity to revise its position on the motion to strike  
9 the LILCO testimony based on subsequent developments.

10 The Board need not rule on that request this  
11 morning. I merely raise the procedural situation that the  
12 LILCO motion has raised and, if the Board grants the  
13 motion, subsequent problems.

14 In summary then, the staff believes that  
15 LILCO has shown good cause for the relief it sought.  
16 It has filed it in a timely manner. I might add, I  
17 don't have the precise dates, but I think it was either  
18 Ms. McCleskey or Mr. Irwin or someone from the law firm  
19 representing LILCO who called me, as indicated in the  
20 footnote to their motion, and told me what they were  
21 proposing. And I told them I thought it was eminently  
22 reasonable and I still think it is eminently reasonable.  
23 And I was somewhat surprised that the county opposed what  
24 it was that LILCO proposed to do.

25 With respect to a lot of the citations that the

1 county and the state have given to what the Board has  
2 or hasn't done with respect to their motions, I don't  
3 want to attempt to address those point by point. I  
4 simply want to say, I think the Board has to decide any  
5 motion based on the four corners of that motion and not  
6 what it did or didn't do with respect to somebody else's  
7 motion.

8 I think that is totally irrelevant.

9 MR. ZAHNLEUTER: May I respond to Ms. McCleskey's  
10 statements briefly?

11 JUDGE LAURENSEN: Before you do that, I am sure  
12 that Mr. Zahnleuter would agree with Mr. Bordenick's  
13 concern about being served with copies. This is the  
14 second time now that we have heard this question this week.  
15 I would again remind all of the parties that insofar as  
16 we have the five parties who are represented at this hearing  
17 and have been throughout, that special effort should be  
18 made to be certain that each of them are served with  
19 all motions that affect the course of the case.

20 Mr. Zahnleuter?

21 MR. ZAHNLEUTER: Thank you. I think the  
22 tables have been turned unfairly upon the state.

23 The burden of proof in this proceeding is upon  
24 the Applicant, LILCO. LILCO filed testimony asserting  
25 that two state facilities were available at two of

1 the Red Cross' relocation centers, and then the state  
2 issued two statements rebutting that statement, opposing  
3 that statement, and countering that statement.

4 I think now, after that showing, the burden  
5 is back upon LILCO to show that the agreements really  
6 do exist and that they are in effect. And in that vein,  
7 if the state's witnesses are being called to testify, I  
8 would also contemplate the idea of calling the Red Cross  
9 people who are supposedly involved in these agreements  
10 to appear at the same time.

11 I think that is a fair request since the  
12 Applicant has the burden of proof to show that there are  
13 agreements with the Red Cross and relocation centers.

14 JUDGE LAURENSEN: Anything else on this  
15 motion?

16 MR. MC MURRAY: Yes, Judge Laurenson, just very  
17 quickly.

18 I note that Ms. McCleskey for the first time  
19 has raised the prospect of supplemental testimony. I  
20 think that if, in fact, the Board rules that we are  
21 going to permit supplemental testimony in this case,  
22 based on anything, that since we are on the fast track,  
23 the Board should set down a date on which we are going to  
24 hear the supplemental testimony, on which we are going to  
25 receive the written supplemental testimony, incorporating

1 enough time for the county to review that supplemental  
2 testimony, perhaps, if necessary, conduct discovery on it,  
3 and be able to conduct meaningful cross-examination.

4 The problem I am worried about is being hit  
5 with supplemental testimony a day or two before we are  
6 going to be confronting this issue in this hearing which,  
7 I think, is something that has happened before.

8 The only other point I would like to make  
9 very quickly is the Board's concern about the county's  
10 own doing matter. There is absolutely no indication in  
11 the record that these -- the failure of these relocation  
12 centers to be available to LILCO has anything to do with  
13 the county's opposition to this case.

14 Furthermore --

15 JUDGE LAURENSEN: I analogized it to the state.  
16 I wasn't just talking about the county. I used that as  
17 the basis for the argument. I am really talking about  
18 the state's own doing here, which, since the state is  
19 now participating in this case, would be in the same  
20 position as the county was previously.

21 MR. MC MURRAY: I understand now, Judge  
22 Laurenson.

23 As far as that argument goes, the theory goes,  
24 I don't think that the Board can use that as the basis of  
25 its ruling and be consistent with prior rulings.

1 Remember, LILCO raised that same issue with  
2 respect to 24.0 -- that is, whether or not Suffolk  
3 County Community College would be available. And in fact,  
4 the Board did not strike that contention based on the  
5 county's own doing, even though the Board specifically  
6 addressed that issue.

7 Finally, Judge Laurenson, I just want to make  
8 clear in the Board's mind that it seems that LILCO has  
9 been relying on the Red Cross to determine whether or not  
10 these relocation centers are available -- at least that  
11 is what its testimony says -- and has not been going to  
12 these particular relocation centers to find out whether,  
13 in fact, these relocation centers are available. That is  
14 LILCO's problem.

15 Now the relocation centers, having been told,  
16 after having received this revised testimony on June 15,  
17 that they are primary relocation centers, are telling  
18 the Red Cross, no, we are not going to be primary  
19 relocation centers.

20 So I think the problem is that LILCO has not  
21 been in touch with these relocation centers.

22 JUDGE LAURENSEN: We will consider the motion  
23 and the arguments that we heard this morning and, as  
24 I indicated previously, we will try to have a decision on  
25 this motion before the end of the day.



1 I think we are ready to resume with the  
2 testimony of the FEMA panel. Before we do that, we will  
3 go off the record for a moment.

4 (Discussion off the record.)

5 JUDGE LAURENSEN: We will take a ten-minute  
6 break.

7 (Recess.)

8 JUDGE LAURENSEN: Back on the record.

9 Mr. Miller?

10 Whereupon,

11 THOMAS E. BALDWIN

12 JOSEPH H. KELLER

13 ROGER B. KOWIESKI

14 and

15 PHILIP H. MC INTIRE

16 resumed the stand and, having been previously duly sworn,  
17 were examined and testified further as follows:

18 CROSS-EXAMINATION

19 BY MR. MILLER: (Resuming)

20 Q Gentlemen, before we start with our  
21 questions going to the specific contentions, I want to  
22 try a few questions with you regarding your involvement  
23 in this testimony, your involvement in the RAC review  
24 process, and the involvement of the RAC committee itself.

25 I have handed out this morning a number of

XXXXXXXX

1 documents which we will mark as exhibits in a few minutes,  
2 but let me just ask first of all, see if we can't make a  
3 clarification, is it fair to say that as a general  
4 proposition, the FEMA testimony, which has been presented  
5 before this Board, is based on the RAC report and the  
6 review of the LILCO plan which has been conducted by  
7 the RAC committee and yourself?

8 A (Witness Kowieski) That is correct.

9 Q And is it fair to say, Mr. Kowieski, that  
10 the RAC report, as a general proposition, was based  
11 upon the RAC committee's review of the LILCO plan and  
12 judgments regarding the plan's compliance with the criteria  
13 of NUREG 0654?

14 A That is also correct.

15 Q Is it fair to say that the RAC review process  
16 in the context we have just discussed is, therefore, a  
17 review of the paper plan, that is, review of the plan and  
18 whether the criteria of 0654 are satisfied or are not  
19 satisfied?

20 A It was a review of the plan, measuring the  
21 plan against the requirements of NUREG 0654, that is  
22 correct.

23 Q Is it fair to say, Mr. Kowieski, that this  
24 plan review has been conducted by FEMA and by the RAC  
25 committee without consideration, at this time, for whether

1 the plan can and will be effectively implemented by LILCO?

2 A The plan was reviewed, as I stated, measured  
3 against the requirements of NUREG 0654. We did not  
4 evaluate whether or not the plan is capable of being  
5 implemented. This would be done at a later stage during  
6 the exercise.

7 Q Is it fair to say, Mr. Kowieski, that,  
8 therefore, a FEMA-graded exercise of the LILCO plan  
9 is required before FEMA can make a determination regarding  
10 whether or not the LILCO plan can be implemented?

11 A As I believe I explained. The process that  
12 we usually follow is that we first, the first step is  
13 to review the plan, to review the plan for its compliance  
14 with the requirements of NUREG 0654. It is the first  
15 step.

16 The second step, which we evaluate the  
17 preparedness and whether or not the plan can be implemented,  
18 that obviously can only be accomplished during the  
19 exercise.

20 A (Witness McIntire) We must point out also  
21 that what Mr. Kowieski has described is the normal process,  
22 and I think all the parties here at this -- around this  
23 table understand that this is not a normal process.  
24 So, therefore, they may have some caveats and there may  
25 be some differences from the normal process.

1           We are not in a position at this time to either  
2 report on anything or to even speculate on them.

3           Q     Mr. McIntire, my question is a very specific  
4 one. Is it fair to say that with respect to the LILCO plan,  
5 FEMA's determination of the plan's workability will  
6 require a FEMA-graded exercise?

7           A     At this time we believe so.

8           Q     It is fair to say, isn't it, Mr. McIntire,  
9 that at this time no such exercise has been scheduled?

10          A     Not to my knowledge.

11          Q     Gentlemen, if you would look, please, at  
12 the testimony, the first 8 pages are general, I suppose,  
13 background information which was provided in your testimony.  
14 I have a few questions about those pages.

15                 Would you look, please, at page 1 where it is  
16 stated in the second sentence that the MOU, that is  
17 the memorandum of understanding between FEMA and the  
18 NRC, correct?

19          A     (Witness Kowieski) That is correct.

20          Q     Where it says that the MOU is an agreement whereby  
21 FEMA would make findings as to whether off-site emergency  
22 response plans are adequate.

23                 I take it that such findings are made by the  
24 RAC committee, correct?

25          A     They are made by FEMA, based on documents review

1 by the RAC.

2 Q So the findings are presented by FEMA, but the  
3 findings are made actually by the RAC review process?

4 A No.

5 MR. GLASS: I have to object to this line  
6 of questioning. It is really calling for a legal  
7 conclusion as to what constitutes findings.

8 There is a legal issue in this particular case  
9 as to what is a finding that is provided by FEMA to the  
10 NRC and the interpretation of the MOU whereby that  
11 determination is arrived at.

12 JUDGE LAURENSEN: But isn't the chairman of  
13 the RAC qualified to speak to that subject?

14 MR. GLASS: The chairman of the RAC certainly  
15 is familiar with the procedure, but I think that it still  
16 is a legal conclusion in that regard.

17 JUDGE LAURENSEN: The objection is overruled.

18 WITNESS KOWIESKI: Could you restate your  
19 question again, sir?

20 BY MR. MILLER:

21 Q Let me try it a little differently.

22 It says in your testimony that, "Whereby FEMA  
23 would make findings as to whether off-site emergency  
24 response plans are adequate."

25 What findings are you talking about there?

1           A     Under terms of MOU, NRC can request FEMA  
2 to provide findings on off-site planning, on the status  
3 of the off-site planning and preparedness at any time.

4           Q     And isn't it true, Mr. Kowieski, that these  
5 findings are made with respect to the LILCO plan by  
6 region -- FEMA Region II's RAC committee?

7           A     No. Findings is made -- it is a FEMA finding.  
8 It is a FEMA finding based on the documents review  
9 available and review by the regional assistance committee,  
10 but the finding is a FEMA finding. It is not RAC finding.

11          A     (Witness McIntire) Maybe I can clarify it  
12 a little bit.

13                 There may be more than one finding in a proceeding.  
14 We classified findings as either interim findings, which  
15 are before the process is completed.

16                 The ultimate purpose of a FEMA finding is  
17 what we call a final 350 report which is a final  
18 determination on off-site preparedness.

19          Q     Mr. McIntire, at this time there has been no  
20 final 350 report by FEMA, correct?

21          A     Correct.

22          Q     So the findings that are presented in the RAC  
23 review process would constitute FEMA's interim findings;  
24 is that correct?

25          A     This gets back to the issue that Mr. Glass raised,

1 whether this is a finding in a legal determination.

2 From a program point of view, I can certainly  
3 say that the RAC report presents a finding or a report  
4 on the plan review completed by the RAC.

5 Q Let me ask again, are those findings the  
6 interim findings that are referred to in your testimony?

7 A I think in the broad definition of interim  
8 finding, it would be such.

END 4

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1           Q       I think it is clear to everyone in the room, but  
2 I want to make it clear for the record also, that the interim  
3 findings that have been made by FEMA to date, through the  
4 RAC review process, have been based solely on Revision 3 of  
5 the LILCO Plan, correct?

6           MR. GLASS: Can I ask for clarification? Are you  
7 talking just about the Shoreham situation right now?

8                   We have jumped from interim findings in general,  
9 are we back to the Shoreham situation?

10          MR. MILLER : I have always been on the Shoreham  
11 situation.

12          WITNESS KOWIESKI: So far, FEMA Region II was  
13 requested to submit only one interim finding report, which  
14 dealt with Indian Point. As far as this particular case, we  
15 did not call the letter -- the letter from NRC did not ask  
16 FEMA to provide interim finding. The letter from NRC  
17 requested that FEMA will provide, will conduct and supervise  
18 independent RAC review of the LILCO Transition Plan.

19                   After completion of this review, that FEMA will  
20 provide NRC with its comments on the Plan review.

21          BY MR. MILLER: (Continuing)

22           Q       Mr. Kowieski, is it fair to say, then, that at  
23 this time the NRC has not requested FEMA to make and issue  
24 interim findings regarding the LILCO Transition Plan?

25          MR. GLASS: This is again when we are getting into



1 that question of legal concerns as to what constitutes an  
2 interim finding.

3 JUDGE LAURENSEN: The witness can testify as  
4 to his understanding of what the request was.

5 The objection is overruled.

6 WITNESS McINTIRE: This is why I said in the  
7 broadest definition from the program prospective, what  
8 basically they have asked us for is a full RAC review, and  
9 it might be characterized by some in the program, not the  
10 legal aspect, as a broad interim finding.

11 BY MR. MILLER: (Continuing)

12 Q Well, Mr. McIntire, I want to ask very specifically  
13 do you consider the RAC review and the findings set forth  
14 in that review to constitute interim findings regarding the  
15 LILCO Transition Plan?

16 (Witnesses confer)

17 A (Witness Kowieski) In my opinion, this would  
18 not constitute an interim finding. The interim findings  
19 has two parts. It deals with planning aspects, and preparedness  
20 aspects. As far as RAC review of the LILCO Plan is concerned,  
21 we dealt only with the planning aspects.

22 Q Mr. Kowieski, is it fair to say, then, that any  
23 interim findings regarding the LILCO Plan submitted by FEMA  
24 would have to await a FEMA graded exercise?

25 MR. GLASS: Again calling for --

1           A       (Witness Keller) I heard you say the LILCO Plan  
2 submitted by FEMA.

3           Q       Let me repeat my question. Is it fair to say  
4 that any interim finding submitted by FEMA regarding the LILCO  
5 Transition Plan would have to wait a FEMA graded exercise.

6           MR. GLASS: Let me restate my objection. This  
7 is calling for a legal conclusion dealing with the issue of  
8 what constitutes legally an interim finding.

9           I think it is confusing the record. It is not  
10 assisting the record at all. I think maybe after the break  
11 we can clarify the issue for the parties, but I think it does  
12 require a legal interpretation of the term, 'interim findings,'  
13 pursuant to the M.O.U. with the NRC and FEMA.

14           JUDGE LAURENSEN: Let's go off the record for  
15 a moment.

16           (Off the record discussion ensues)

17           JUDGE LAURENSEN: This is a matter involving  
18 legal concussions with which he would -- on which he would  
19 like to confer with the panel of witnesses. Is there any  
20 objection to that?

21           MR. MILLER: Well, Judge Laurenson, I have an  
22 objection, because I am in the middle of a line of questions.  
23 I thought I was just ready to wrap this up. Mr. Kowieski  
24 just told me that interim findings go to both the Plan review  
25 and to implementability, which we have discussed is an exercise,

1 a FEMA graded exercise.

2 I am not trying to wrap it up by saying: Is it  
3 therefore, fair to say that interim findings regarding the  
4 Shoreham plan, LILCO Plan by FEMA, must await a FEMA graded  
5 exercise.

6 JUDGE LAURNESON: The point is that he said  
7 you raised a question involving legal conclusion of the  
8 definition of, 'findings', or, 'interim findings,' and those  
9 terms are used in the NRC regulations as well as the Memorandum  
10 of Understanding, and he has asked for an opportunity to  
11 consult with his witnesses concerning this. I guess my  
12 question is: Are you objecting to his request for the  
13 opportunity to consult before they answer further?

14 MR. MILLER: I suppose I have no objection.

15 JUDGE LAURENSEN: All right. I suppose we will  
16 just take a recess in place while Mr. Glass confers with  
17 the witnesses.

18 (Mr. Glass confers with witnesses.)

19 MR. GLASS: We are ready to resume.

20 JUDGE LAURENSEN: Do you recall the question,  
21 Mr. Kowieski?

22 WITNESS KOWIESKI: Yes. Well, after consultation  
23 with my counsel, Mr. Glass, he clarified to me the term,  
24 'interim finding,' and what is expected with regard to when  
25 we are requested to provide any findings. If NRC requests

1 us to provide any findings under terms of M.O.U., and interim  
2 findings would constitute request for Plan review alone.

3 So, in other words whatever NRC requested with  
4 regard to Shoreham, to review LILCO Transition Plan, Revision  
5 3, it constituted interim finding.

6 JUDGE LAURENSEN: Let me just make sure. I  
7 will clarify one matter before Mr. Miller goes back. I think  
8 previously your testimony, Mr. Kowieski, was that the RAC  
9 review which we have before us today did not constitute  
10 interim findings. Is it now your testimony that that does  
11 constitute interim findings.

12 WITNESS McINTIRE: Yes, Your Honor. We were  
13 confused because we were under the impression that we had  
14 to be requested formally for an interim finding, with  
15 capital 'I', capital 'F'. We have been informed that under  
16 the M.O.U., the legal background is such that any such  
17 request for a finding, be it either on the Plan review, on  
18 the exercise, or both, does legally constitute an interim  
19 finding under the terms of the M.O.U.

20 MR. GLASS: And what Mr. Kowieski indicated earlier,  
21 the fact that it is a FEMA interim finding is still correct.  
22 It is still FEMA. It is FEMA's final determination when that  
23 material is transmitted. It is not necessarily a RAC -- the  
24 RAC material would constitute part of the FEMA finding in  
25 this particular case. There may be other cases where it would

1 not involve a RAC document.

2 MR. MILLER: Frankly, Judge Laurenson, I think  
3 I understand now what the witnesses are saying, but I am not  
4 sure I understand what Mr. Glass is saying. I know he is  
5 not testifying here, but I don't understand the point that  
6 he was making.

7 MR. GLASS: There are situations where an interim  
8 finding could be requested of an exercise, and that would not  
9 necessarily constitute a RAC review during the course of  
10 an exercise, and I think the witnesses have testified to that  
11 fact before. That is what we were trying to clarify.

12 BY MR. MILLER: (Continuing)

13 Q Mr. McIntire, is it your understanding now, after  
14 consulting with Mr. Glass, that if FEMA were to issue interim  
15 findings regarding the LILCO Transition Plan based upon  
16 a FEMA graded exercise, that there would have to be a request  
17 under the terms of the M.O.U. from the NRC before FEMA would  
18 do that?

19 A (Witness McIntire) Not necessarily. The point  
20 I was trying to make that upon clarification, that any  
21 request by the NRC, through the M.O.U., does constitute an  
22 interim finding.

23 These interim findings can take many, or several  
24 forms and shapes.

25 Q It is possible, therefore, Mr. McIntire, that the

1 NRC could, under the terms of the M.O.U., request -- make  
2 a request of FEMA to present findings on a FEMA graded  
3 exercise?

4 A Yes.

5 Q And then FEMA would consider those findings  
6 also to be interim findings?

7 A Yes.

8 Q And at this point in time, to your knowledge,  
9 the NRC has made no such request regarding any FEMA graded  
10 exercise?

11 A That is correct.

12 Q Are any findings issued by FEMA with respect  
13 to an offsite emergency plan considered final findings before  
14 there is an exercise, and findings are issued by FEMA regarding  
15 such an exercise?

16 A That has never happened, to my knowledge.

17 Q Can you tell me, gentlemen, how it is that  
18 it was determined that the four of you would serve as witnesses  
19 to present the FEMA testimony.

20 A It was decision. It was discussed with top  
21 management of the Regional Office, and with our attorney,  
22 Mr. Glass, and we came up with a proposal, and that was  
23 concurred in by the program office in Washington, and the  
24 General Counsel's Office in Washington.

25 JUDGE KLINE: I am sorry. I wanted to clarify

1 something on interim findings before we leave it.

2 Does the term, 'interim finding' imply anything  
3 tentative about the findings? Is it likely, or even possible,  
4 that the final findings would be different from the interim  
5 findings.

6 WITNESS McINTIRE: Yes, that is the correct  
7 interpretation. The -- an interim finding can be anywhere  
8 within the process approaching the final resolution of the  
9 final finding.

10 JUDGE KLINE: Thank you.

11 BY MR. MILLER: (Continuing)

12 Q Gentlemen, beginning on page 3 of your testimony,  
13 there is some specific discussion regarding your roles  
14 individually with respect to the LILCO Plan. I would like  
15 to take these in order, so Mr. Baldwin I will start with you.

16 It states at the top of page 4 that you first  
17 became involved with Shoreham when you received a letter  
18 from Mr. Petrone, the Director of FEMA Region II, dated  
19 October 4, 1983, do you see that?

20 A (Witness Baldwin) Yes, I do.

21 Q Am I correct, Mr. Baldwin, that this was the  
22 letter requesting you to participate in the RAC review of the  
23 LILCO Plan?

24 A Yes, that is correct.

25 Q And at that time that would have been Revision 1

1 of the LILCO Plan, correct?

2 A Yes, that is correct. Revision 1.

3 Q And the answer to Question 5, Mr. Baldwin, you  
4 set forth a general description of your involvement with the  
5 LILCO Plan to the present time, is that correct?

6 A Yes, that is correct.

7 Q It is fair to say, isn't it Mr. Baldwin, that  
8 you have certainly done more than is set forth in Answer 5  
9 to your testimony.

10 For example, you played an important role in  
11 preparing for the January 20th meeting of the RAC Committee,  
12 isn't that correct?

13 A Yes, that is correct.

14 Q And you worked with Mr. Kowieski in preparing the  
15 final RAC report that was issued to the FEMA Headquarters  
16 in Washington, correct?

17 A That is correct.

18 Q Mr. Baldwin, with respect to what you have  
19 reviewed regarding the LILCO Transition Plan, relying on  
20 my memory, if I recall correctly, you have reviewed some but  
21 not all of the implementing procedures of the LILCO Plan, is  
22 that correct?

23 A That is correct.

24 Q And you have conducted a fairly limited review  
25 of Appendix A of the LILCO Plan, is that correct?



1           A       Well, could you define, 'limited?' I have  
2 read most of what is in Appendix A, the Evacuation Plan.

3           Q       You have read most of Appendix A?

4           A       With the exception of the details on the  
5 evacuation model that is contained in that, yes, sir.

6           Q       I think, Mr. Baldwin, that you have told me that  
7 with respect to your review of Appendix A, you made no attempt  
8 to determine the adequacy of evacuation time estimates, for  
9 example. Instead, your review was one to just ensure that  
10 some data was set forth in Appendix A by LILCO, is that  
11 correct?

12          A       Yes. My review consisted of examining the  
13 table to ensure that the evacuation time estimates under  
14 normal and severe weather conditions, for the general and  
15 special populations, are filled in there.

16          Q       And with respect to the single volume of the  
17 LILCO Plan, which is actually the Plan itself, Mr. Baldwin,  
18 have you reviewed the entire Plan volume?

19          A       Yes, I have. I have read the entire Plan.

20          Q       Referring to the single volume, correct?

21          A       To the single volume, that is correct .

22          Q       And I think it is fair to say, Mr. Baldwin, that  
23 you have never been to the Shoreham site, correct?

24          A       That is correct.

25          Q       And you have never been to Suffolk County with

1 respect to business regarding the Shoreham plant, is that  
2 correct?

3 A That is correct.

4 Q Mr. Baldwin, it is also fair to say, isn't it,  
5 that you cannot tell me whether each implementing procedure  
6 of the LILCO Plan has been reviewed by at least one member  
7 of the RAC Committee?

8 A I do not have any specific detailed information  
9 of -- that each -- yes, I do, too.

10 I know that members of the Committee that sit  
11 around this table, for instance, have read those implementing  
12 procedures. That they have all been read.

13 Q Maybe my question wasn't phrased very well. Isn't  
14 it fair to say that you have no knowledge regarding whether  
15 any member of the RAC Committee, including Mr. Keller, has  
16 read all the implementing procedures set forth in the LILCO  
17 Plan?

18 A That is correct. I have no specific information  
19 myself as to whether all of the procedures have been read  
20 by any one individual.

21 Q Are you saying, Mr. Baldwin, that you do know  
22 that all of the procedures have been reviewed by the total  
23 RAC Committee?

24 If you put all the members of the RAC Committee  
25 together, are you saying that all of those procedures would

1 have been reviewed by at least one person?

2 A Yes.

3 A (Witness Keller) I would like to add that I  
4 have read all of it.

5 Q All of what, Mr. Keller?

6 A The four volumes that you have talked about  
7 earlier. What is called the Plan, the two volumes of  
8 implementing procedures, and the Appendix A.

9 Q You have read all of that?

10 A Yes, sir.

11 Q Now, have you reviewed the four volumes of the  
12 LILCO Plan, Mr. Keller?

13 A No. But I have read all of it.

14 Q Maybe we should clarify for the Board and the  
15 record, how you distinguish, 'review,' and 'read.'

16 A In a review, you would compare the content of the  
17 particular section or part of the four volumes, against some  
18 criteria.

19 In this case, it would be NUREG 0654.

20

End 5.  
Sue fols 21

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I have not done that, but I have read all of the plan.

2

3

Q Mr. Keller, let's go on to your discussion of the testimony regarding your involvement with the LILCO plan. And I gather from the statement at the top of Page 5 of the testimony that like Mr. Baldwin, your first involvement came when you were requested to participate in the RAC review process regarding Revision 1 of the LILCO plan, correct?

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A (Witness Keller) That's correct.

11

12

13

Q And it's fair to say, isn't it, Mr. Keller, that your involvement with the RAC process ended with the meeting of January 20, 1984?

14

A That is correct.

15

16

17

Q And you were not involved as was Mr. Baldwin in helping to prepare for the January 20th meeting of the RAC Committee; is that correct?

18

A Other than having submitted formal comments.

19

20

Q You submitted formal comments on behalf of yourself only?

21

A That's correct.

22

23

24

Q And you had nothing to do with the putting together of the final RAC report as it was put together following the January 20th meeting?

25

A That is correct.

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Q And, Mr. Keller, you have never been to the Shoreham plant, the Shoreham site, or to Suffolk County; is that correct?

A With regard to matters of the Shoreham plant, that is correct.

Q And is it fair to say, Mr. Keller, that your personal comments regarding your review of the LILCO plan only set forth matters which you consider to be inadequate under the LILCO plan?

A The written comments which I submitted to Mr. Kowieski were only in the form of negative evaluations. That is correct.

Q Inadequate ratings?

A That is correct.

Q Mr. Kowieski, you state at the top of Page 6 of the testimony that you became involved in emergency planning issues regarding the Shoreham plant in 1982. But is it fair to say that prior to September of 1983 your involvement with the Shoreham plant was limited?

A (Witness Kowieski) Limited in terms that I wasn't involved in the plan review process, that's correct.

Q Well, your involvement during 1982, Mr. Kowieski, was your involvement as it concerned the meeting set forth with representatives of Suffolk County, the NRC, New York State and FEMA; is that correct?

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A That's correct.

2

Q Just that one meeting?

3

A One or two meetins. Two meetings.

4

Q And could you just tell me generally, Mr. Kowieski, what this one or these two meetings concerned?

6

A To the best of my recollection, the meeting was arranged -- I don't know who sponsored. There were representatives from NRC Headquarters Office, NRC Regional Office, King of Prussia, FEMA Headquarters Office, FEMA Regional Office, Suffolk County and LILCO. The LILCO and -- both parties, the LILCO and Suffolk County presented their points of view on emergency planning around Shoreham Nuclear Power Station.

14

Q Mr. McIntire, were you at these same meetings?

15

A (Witness McIntire) Yes, I was.

16

Q Is it fair to say that your involvement prior to the Fall of 1983, with respect to the LILCO plan, was also limited?

18

19

A Yes.

20

Q And other than these meetings that Mr. Kowieski described, did you have any other involvement with the Shoreham plant prior to the Fall of 1983?

22

23

A There were several discussions with National Office personnel on the direction that the Shoreham process was taking. But nothing formal that I can remember.

24

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2 Q Could you tell me generally, Mr. McIntire, these  
3 discussions regarding the general direction that the Shoreham  
4 plant was taking, what did they involve?

5 A One that comes to mind immediately is that we  
6 were required -- I believe it's on a monthly basis to  
7 report to Congress?

8 (Witness Kowieski) That's correct.

9 (Witness McIntire) On a monthly basis, we are  
10 required to submit a report on the status of each site  
11 within the Region. And this is used to compile a report  
12 on a quarterly basis which is sent to Senator Simpson. So,  
13 I remember having some discussions on the wording of the  
14 National Office report to Senator Simpson regarding the  
15 Shoreham site.

16 Q Basically, Mr. McIntire, these meetings then  
17 were status reports of the Shoreham plant?

18 A These were basically phone discussions of the  
19 language, draft language, for the report.

20 Q Mr. Kowieski, on Page 6 where you talk about  
21 the fact that you Chaired the RAC meeting of January 20th  
22 and then you finalized the submission of the RAC review  
23 to the National Office, in finalizing the RAC review you  
24 worked with Mr. Baldwin and Mr. Acerno from FEMA; is that  
25 correct?

A (Witness Kowieski) That's correct.

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1 Q And, Mr. Kowieski, you have never been to the  
2 Shoreham site, have you?

3 A No, sir.

4 Q And, Mr. Kowieski, it's fair to say that you  
5 did not conduct a technical review of the LILCO plan your-  
6 self, correct?

7 A I would have to qualify and say, yes, I did not  
8 provide a set of comments, initial set of comments, on the  
9 LILCO Transition Plan 3. But, as I already pointed out  
10 during the deposition, that I review every single comment  
11 as it applies to NUREG element, consolidated document  
12 prepared by Mr. Baldwin and Mr. Acerno, and I review and  
13 I modify as I felt was appropriate before we went and  
14 presented a document, working document, to the Regional  
15 Assistance Committee on January the 20th.

16 And I interacted on daily basis several times a  
17 day, each time Mr. Baldwin was in the office, in my office,  
18 as well as Mr. Acerno who is working for me, is working on  
19 my staff.

20 Q But it's fair to say, Mr. Kowieski, that with  
21 respect to the technical review of the LILCO plan that  
22 was conducted by the RAC Committee, you relied on the  
23 members of the RAC, Mr. Keller and Mr. Baldwin to conduct  
24 that review, correct?

25 A I relied in terms -- sure, I have not gone and



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1 re-reviewed the plan, no. That's correct. However, each  
2 time I had a question I have gone back to the plan and  
3 verify against the comments, consolidated comments, provided  
4 by Mr. Baldwin and Acerno, prepared by Mr. Baldwin and  
5 Acerno, based on the RAC review comments.

6 Q Mr. McIntire, on Page 7 of the testimony there  
7 is some discussion of the nature of your involvement with  
8 the LILCO plan. It's fair to say, isn't it, that you have  
9 not reviewed either the single plan volume of the LILCO  
10 plan nor the implementing procedures nor Appendix A of the  
11 LILCO plan; is that correct?

12 A (Witness McIntire) Using the definition of  
13 review, that's correct.

14 Q What is your definition of review, sir?

15 A The one that Mr. Keller stated.

16 Q Perhaps you can tell me.

17 A Basically, the comparison of sections of the  
18 plan against specific NUREG 0654 criteria.

19 Q It's fair --

20 A (Witness Kowieski) Let me add, again I would  
21 just go along with what Mr. McIntire said, because I want  
22 to make clear that I read the plan from the first to last  
23 page. If you remember, I stated already for the record,  
24 that I read the entire plan.

25 Q It's fair to say, isn't it, Mr. McIntire, that

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you have not looked at Appendix A of the LILCO plan?

2 A (Witness McIntire) I don't recall looking at  
3 it. I may well have during this process.

4 Q And that you have not looked at or read any of  
5 the implementing procedures of the LILCO plan, correct?

6 A I believe on several occasions I have reviewed  
7 sections of the implementing procedures.

8 Excuse me, to clarify, read.

9 Q Mr. McIntire, do you recall at your deposition  
10 where I asked you: Have you looked at, to your recollection,  
11 any of the implementing procedures.

12 And you stated: I can't recall specific proce-  
13 dures that I have looked at.

14 A What page are you on, sir? What page are you  
15 on?

16 Q Page 18 of your deposition.

17 A (The witness is looking at a document.)

18 Yes, I recall that.

19 Q Is it fair to say that at this time you still  
20 cannot recall any specific procedures that you may have  
21 looked at?

22 A During the course of this cross-examination,  
23 preparing for it, we have looked at series of the implementing  
24 procedures. We were looking yesterday at the people that  
25 had pagers, people that were being notified.

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1 Q Are you saying that since this hearing started  
2 with your testimony you have looked at some of the pro-  
3 cedures?

4 A I'm saying that since the deposition and up to  
5 this point, I have looked at some of the procedures in  
6 that time period.

7 Q Prior to that time, had you looked at any of  
8 the procedures of the LILCO plan?

9 A Probably. But, as I said in my deposition, I  
10 couldn't recall.

11 Q Is it fair to say, Mr. McIntire, when you state  
12 on Page 7 of the testimony that you were involved in  
13 monitoring the RAC meeting of January 20th and also monitor-  
14 ing the review of the LILCO plan by the RAC Committee,  
15 that the concept of monitoring primarily meant that you  
16 helped or worked with Mr. Kowieski in solving problems,  
17 logistical problems, that came up?

18 A Yes. And certainly on January 20th I was in  
19 Atlanta. I was not even in the New York area.

20 Q You did not attend the January 20th meeting?

21 A That's correct.

22 Q And is it fair to say, Mr. McIntire, that your  
23 involvement in reviewing the RAC report to FEMA Headquarters  
24 in Washington was primarily an involvement with reading the  
25 report for, I think as you have described it to me before,

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1 readability aspects?

2 A That was one aspect. I did read the report and  
3 I suggested to Mr. Kowieski that he consider other areas  
4 that they had not asterisked for legal concerns, to look  
5 at those again to see if perhaps they might be also in that  
6 category.

7 Q I recall that now, Mr. McIntire. You had, I  
8 think it's fair to say, some legal concerns regarding the  
9 LILCO plan that were in addition to legal concerns that  
10 had been expressed by Mr. Kowieski and the RAC Committee;  
11 is that correct?

12 A I asked them to relook at several other NUREG  
13 elements with regard to legal concerns. In other words, a  
14 second look, or a closer look.

15 Q And it's fair to say, isn't it, Mr. McIntire,  
16 that as a result of that request some additional aspects  
17 of the RAC report were asterisked by Mr. Kowieski, meaning  
18 that the RAC expressed some additional legal concerns to  
19 the LILCO plan?

20 A I believe there was only one additional as a  
21 result of my request.

22 Q And, Mr. McIntire, it's fair to say, isn't it,  
23 that with respect to legal concerns of FEMA regarding the  
24 LILCO plan there was an assumption made by FEMA and the  
25 RAC Committee that LILCO has the legal authority to implement

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2 the LILCO plan, and that assumption was made in order for  
3 the RAC Committee to be able to conduct its review of the  
4 plan?

5 A I think a better phrasing was that we asked  
6 the RAC to hold the legal questions blind and not to have  
7 them be concerned in their review, but to review the plan  
8 strictly on its technical merits.

9 Q And the RAC Committee attempted to asterisk  
10 findings where legal concerns are an issue, in FEMA's  
11 opinion, is that correct?

12 A I think Mr. Kowieski can better discuss the  
13 actual RAC involvement and process than I can.

14 (Witness Kowieski) When we approached the RAC  
15 review, the review of the LILCO Transition Plan, Revision 3,  
16 it is important to note that NUREG 0654 refers to State  
17 and local government. Usually when a plan comes from the  
18 Governor or his or her designee to Regional Director, would  
19 request for review and comments. In this case, the process  
20 was different.

21 The plan was developed and submitted by the  
22 utility to the Nuclear Regulatory Commission. Nuclear  
23 Regulatory Commission, under terms of MOU, requested the  
24 plan will be reviewed by Regional Assistance Committee. In  
25 turn, I was requested that I will instruct the RAC members  
to conduct a full independent RAC review. Also, I advised

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2 the FAC members to assume that LILCO will have legal  
3 authority to implement the plan.

4 Otherwise, because when you go to NUREG elements,  
5 they refer to State and local. You wouldn't be able to  
6 start your review without making certain assumptions. That  
7 is what we did.

8 However, RAC members raised certain concerns.  
9 They raised the concern, some of them, if the plan can be  
10 implemented without State or local participation. I sug-  
11 gested, and it was concurred by Mr. McIntire and Regional  
12 Director, and also after consultation of National Office  
13 later on, it was concurred by National Office that we will  
14 separate any legal concerns put out as a second independent  
15 document. And we will concentrate on the technical aspects  
16 of the plan.

17 So, as an end result of our review, we had two  
18 documents. Technical review based on the requirements of  
19 NUREG 0654, and also legal concerns. The Regional Assistance  
20 Committee did not make any great attempt to deal with legal  
21 concerns. It is not our territory. We are not lawyers. We  
22 are not qualified. We said: Well, let somebody else deal  
23 with the legal concerns. We will deal only with technical  
24 aspects of the plan.

25 Q Mr. Kowieski, it is fair to say, though, that  
findings which in the RAC's opinion raised questions about,

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1 raised concerns about, LILCO's legal authority were asterisked  
2 in the draft report; is that correct?

3 A That's an approach that I developed. That's  
4 correct.

5 Q And, Mr. McIntire, it's fair to say, isn't it,  
6 that if the question of LILCO's legal authority is resolved  
7 in a way contrary to the assumption made by FEMA in the  
8 RAC report that all of the adequate findings in the RAC  
9 report presently asterisked would become inadequate?  
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1 (Witnesses conferring.)

2 A (Witness McIntire) I would be our assumption  
3 that would be the case.

4 Q And, Mr. McIntire, I think I have asked you  
5 this question before, do you think that FEMA can make  
6 a determination regarding the adequacy of the LILCO plan  
7 before the courts make a decision regarding LILCO's legal  
8 authority to implement the LILCO transition plan?

9 A Are you asking a final decision? Was that your  
10 word?

11 Q Do you think that FEMA can make a determination  
12 regarding the adequacy of the LILCO plan before the courts  
13 make a decision regarding LILCO's legal authority to  
14 implement the LILCO plan?

15 MR. GLASS: Calling for speculation at this  
16 particular point.

17 JUDGE LAURENSEN: Overruled.

18 BY MR. MILLER:

19 Q I would like to ask Mr. McIntire, Mr. Kowieski,  
20 and then you can add, if you want.

21 (Witnesses conferring.)

22 A (Witness McIntire) My personal opinion is that  
23 a final determination by FEMA could not be made until there  
24 is a determination on the legal question by the appropriate  
25 court.



1           A       (Witness Kowieski) I may only add that we can  
2 pass a judgment on the plan itself, on the plan as it  
3 complies with NUREG 0654 requirements planning criteria.

4                   I think it would be very hard to pass the final  
5 judgment on planning and preparedness, on those two  
6 components, without having legal authority being addressed.

7           Q       Are you through?

8           A       Yes, sir.

9           Q       Are you saying, Mr. Kowieski, that in your  
10 opinion, FEMA can conduct its technical review,  
11 technical plan review of the LILCO plan, without resolution  
12 of the legal authority question?

13          A       Yes, we have done it. We were asked by NRC.  
14 We have completed our review of revision 3.

15          Q       And you were able to do that, sir, by making  
16 this assumption regarding LILCO's legal authority to  
17 implement the plan, correct?

18          A       That is correct.

19          Q       Mr. Kowieski, let me just clarify one other  
20 point. You are not saying, are you, that if it would  
21 be determined that LILCO would not have legal authority  
22 to implement its plan, that FEMA could still make findings  
23 that the plan is adequate with respect to issues involving  
24 LILCO's legal authority?

25                   JUDGE LAURENSEN: There was a double negative in

1 that question. Maybe you could rephrase it. I had  
2 trouble following it.

3 BY MR. MILLER:

4 Q Mr. Kowieski, is it your opinion that if  
5 it was determined by the appropriate authorities -- let's  
6 assume the courts -- that LILCO does not have the legal  
7 authority to implement the LILCO plan, that FEMA could  
8 nevertheless conclude that the LILCO plan complies with  
9 the standards of NUREG 0654?

10 A I am not saying that.

11 Q Mr. McIntire, just to make sure that you and  
12 I have our understanding intact, do you have your  
13 deposition with you?

14 A (Witness McIntire) Yes, I do.

15 Q Would you look at page 40 of your deposition.

16 There is a question posed at the very bottom  
17 of page 40 to you. It says, "Do you think that FEMA  
18 can make a determination regarding the adequacy of  
19 the LILCO plan before the courts make a decision regarding  
20 LILCO's authority, legal authority, to implement and carry  
21 out that plan?"

22 And you respond, "No. I think that the courts  
23 will have to rule before a final determination can be  
24 made by FEMA."

25 Do you see that?

1 A Yes, I do.

2 Q Is your testimony still the same?

3 A I believe I testified to it previously this  
4 morning. The answer is yes.

5 Q Gentlemen, would you look please -- I am going  
6 to try to do this in a general fashion, Mr. Kowieski,  
7 and you tell me if my characterization is correct.

8 Is it fair to say that the RAC review process  
9 was conducted as follows:

10 There was a request to Region II to conduct a  
11 full RAC review; members of the RAC, including Mr. Keller  
12 and Mr. Baldwin, were requested to review the LILCO plan  
13 and submit comments in writing regarding their technical  
14 assessment of the plan and its compliance with NUREG 0654;  
15 those comments came in to Region II; the comments were  
16 assessed and a working draft of the RAC report was put  
17 together by Mr. Baldwin and Mr. Acerno, with you then  
18 being involved in reviewing that draft; there was then a  
19 meeting on January 20 of 1984, at which time the full RAC  
20 committee, including Mr. Keller and Mr. Baldwin, came  
21 together to discuss the assessment of the LILCO transition  
22 plan; that during that meeting on January 20th, a consensus  
23 was reached regarding findings of the RAC committee  
24 regarding the LILCO plan; that following the January 20th  
25 meeting, you, Mr. Baldwin, Mr. Acerno, to a much more

1 limited extent, put together a final version of the RAC  
2 report which was sent around February 10th to the national  
3 office in Washington; there were some editorial, minor  
4 changes made by the national office, and the report was  
5 released to the national office in final form by Region II  
6 around February 21 and was released to the NRC by FEMA  
7 national headquarters about March 15, 1984.

8 Is that a fair characterization?

9 A (Witness Kowieski) Obviously, you abbreviated  
10 the process that took place. When RAC comments arrived,  
11 I reviewed the RAC comments for their validity and then  
12 I passed them to Mr. Acerno and Mr. Baldwin for consolida-  
13 tion.

14 Prior to the January 20th meeting, I spent  
15 several, at least a couple days, reviewing the draft  
16 document and making -- based on my experience, my  
17 knowledge of the subject matter, I made a modification.  
18 I reviewed certain portions of the plan. I verified  
19 personally if comments are valid or not.

20 At the January 20 meeting, we had extensive  
21 discussion. It is important to note how consensus was  
22 reached.

23 We discussed every comment that was in the  
24 draft document. I asked for input from regional assistance  
25 committee from each member. Comments were made, additional

1 comments were incorporated. I read back the comments  
2 made at the January 20 meeting, and when agreement and  
3 consensus was reached, we proceeded to next element.

4 After the time of the January 20 meeting, it  
5 was basically to us polishing the document, making certain  
6 that everything is good English, it reads well. And so  
7 we spent a great deal of time to just put in final form.

8 Q Yes, sir. I wasn't trying to indicated that  
9 everything happened as quickly as I asked my question.

10 But was my characterization essentially a  
11 fair characterization of the process?

12 A The chronology was correct.

13 Q Do you have the documents that were handed out  
14 this morning in front of you, Mr. Kowieski? I think  
15 by using these documents we maybe could do this in a fairly  
16 quick fashion.

17 MR. MILLER: Let me, before we start asking  
18 questions, just mark them or ask Judge Laurenson to mark  
19 them as exhibits.

20 If we start with SCEP-76, with the document  
21 dated September 15, 1983.

22 JUDGE LAURENSON: That is correct.

23 MR. MILLER: I am just going to try to go  
24 through these hopefully in the order everyone was given  
25 them.

1 The document dated October 4, 1983 would be  
2 SCEP-77.

3 WITNESS KELLER: From Petrone to Region II?

4 MR. MILLER: Yes, sir.

5 The document dated November 18, 1983, from  
6 Mr. Kowieski to Mr. McIntire would be SCEP-78.

7 The document dated November 23, 1983 from Mr.  
8 Kowieski to Mr. Petrone would be SCEP-79.

9 The document dated December 22, 1983 from  
10 Mr. Jordan of the NRC to Mr. Krimm would be SCEP-80.

11 The document dated January 24, 1984 from  
12 Mr. Petrone to Mr. Speck would be SCEP-81.

13 The document dated January 26, 1984 from  
14 Mr. Dircks of the NRC to Mr. Speck would be SCEP-82.

15 The document dated February 3, 1984 from  
16 Mr. Speck to Mr. Petrone would be SCEP-83.

17 There is a handwritten single-page document  
18 which has the date of message 2/28, it looks like, it  
19 says from Marshall Sanders, Subject, Shoreham, that would  
20 be SCEP-84.

21 The document dated March 15, 1984 from  
22 Mr. Kowieski to the members of the RAC committee would be  
23 SCEP-85.

24 And the document dated March 15, 1984 from  
25 Mr. Speck to Mr. Dircks of the NRC would be SCEP-86.



1 Mr. Jordan of the NRC to Mr. Krimm, is it your  
2 understanding that this is the request from the NRC to  
3 FEMA for a RAC review of revision 1 of the LILCO plan?

4 A (Witness McIntire) Yes.

5 Q Mr. McIntire, have you seen this document before?

6 A Yes.

7 Q Were you involved in any way with this document  
8 in terms of the preparation of the document?

9 A No.

10 Q Did you see it for the first time about the  
11 time that it was received or sent to Mr. Krimm?

12 A That is my recollection.

13 Q Where it states, in the second paragraph,  
14 "As I discussed with you, there has been a delay in the  
15 Shoreham licensing proceedings due to an issue unrelated  
16 to emergency planning," do you see that statement?

17 A Yes, I do.

18 Q Was that issue the diesel generators at the  
19 Shoreham plant?

20 A I believe it was.

21 Q And the next document, dated October 4, 1983,  
22 from Mr. Petrone to all RAC II members, this would have  
23 been a copy of -- this is a copy of the letter that was  
24 sent to members of the RAC committee, including  
25 Mr. Keller and Mr. Baldwin, requesting their assistance in the



1 RAC review of the LILCO plan, correct?

2 A That is correct. This was for revision 1.

3 Q If you look at SCEP-78, Mr. McIntire, this  
4 is the letter from Mr. Kowieski to yourself, and I take  
5 it that you would have seen this document before  
6 November 18, 1983?

7 A Yes.

8 Q And Mr. Kowieski, you did, indeed, prepare this  
9 document?

10 A (Witness Kowieski) Yes, sir.

11 Q On page 2 of this document -- let me ask you  
12 this, Mr. Kowieski, I suppose, since you wrote it.

13 You have a statement that talks about how you think  
14 the LILCO plan should be reviewed, and you say, "Using  
15 the same systematic approach applied for other sites  
16 throughout the states of New York and New Jersey."

17 Do you see that comment?

18 A Yes, I do.

19 MR. GLASS: Just to assist us, could you tell  
20 us where you are?

21 MR. MILLER: On page 2, around the 7th and 8th  
22 lines down from the top of the page.

23 BY MR. MILLER:

24 Q Mr. Kowieski, was this memorandum to Mr. McIntire  
25 prompted by the fact that revision 2 had been received by

1 Region II office?

2 A That is my recollection.

3 Q And at the time, Mr. Kowieski, was it your  
4 suggestion that the RAC review of revision 1 be completed  
5 before the RAC do anything with respect to revision 2 of  
6 the LILCO plan?

7 A That is correct, to give an opportunity for  
8 LILCO to review our comments on revision 1 before submitting  
9 anything else.

10 Q And is it fair to say, Mr. Kowieski, that  
11 your recommendation in this regard was not accepted?

12 A Well, it is your characterization.

13 I would say that you have to, again,  
14 evaluate the situation. Shortly after revision 2 arrived,  
15 my counsel, Mr. Glass, advised me that revision 3 is  
16 already in pipe line.

17 So after consultation with Mr. Glass and  
18 Mr. McIntire and Mr. Petrone and per my and Mr. Glass's  
19 request, LILCO put together one document, consolidated  
20 document, which included revision 1, 2, and 3.

21 And I felt this was acceptable to me.

22 Q Mr. Kowieski, at this time, I take it from  
23 what you have said earlier during this week, you have  
24 not reviewed revision 4 of the LILCO plan, but have  
25 you seen revision 4 of the LILCO plan?

1           A     Yes. As a matter of fact, it is sitting next  
2 to my office, big box.

3           Q     Do you have any idea, Mr. Kowieski, as to  
4 how long it will take the RAC committee to perform a  
5 review of revision 4?

6           A     (Witness McIntire) I had a conversation  
7 with our national office before the start of the  
8 hearings today, and they are in the process of drafting  
9 a letter back to the NRC which formally submitted revision  
10 4 and requested a review this week. And that letter should  
11 be signed today or tomorrow, and I will be able to report  
12 definitively, once that letter is signed.

END 7

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1 Q Mr. McIntire, what is this letter from FEMA to  
2 the NRC going to say?

3 A It is going to say --

4 MR. GLASS: I object. I have not seen the  
5 letter. This is a situation where a letter has not come  
6 out to the NRC yet. It is only a draft. And I think it  
7 is a little inappropriate for a witness to be commenting  
8 on possibly a draft sent by one Federal agency to another  
9 before the document comes out.

10 You know, we get into a pre-decisional area.  
11 It may be factual. I just don't know. But I will be more  
12 than glad once we know it is available -- we happen to have  
13 some facilities here to have some material, at least this  
14 week, telecopied up, and if it goes out tomorrow I will be  
15 more than willing to bring it in.

16 JUDGE LAURENSEN: In light of that representation,  
17 the objection is sustained.

18 I think this is for clarity purposes a matter  
19 covered by pre-decisional executive privilege.

20 MR. MILLER: I take it, Judge Laurenson, that  
21 before the week is over we are going to see the letter.

22 MR. GLASS: If the letter goes out, you will  
23 have it. We will make some inquiries during the lunch  
24 recess.

25 BY MR. MILLER: (Continuing)

1 Q Let me go back to my original question to Mr.  
2 Kowieski. Can you tell me at this time, do you have any  
3 idea whatsoever how long a review of Revision 4 by FEMA and  
4 the RAC will take?

5 A (Witness Kowieski) Well, you understand, I  
6 have been on the witness stand for a while, and I have been  
7 deposed, so I don't have really the time to access the  
8 situation.

9 The box arrived, I believe, last week. It  
10 was opened just to verify the material was there. I have  
11 not even attempted to evaluate the volume and how much work  
12 would be required on my part or on the part of RAC members.

13 So, the answer to your question is, no.

14 A (Witness McIntire) The other factor that has  
15 to be considered in this process is other priorities and  
16 workloads of our division in the foreseeable future.

17 Q Gentlemen, would you look please at SC EP-79,  
18 which is the November 23rd letter from Mr. Kowieski to Mr.  
19 Petrone.

20 Mr. Kowieski, can you tell me why -- I take  
21 it first of all that you did, indeed, write this memorandum,  
22 correct?

23 A (Witness Kowieski) Yes, I did.

24 Q Can you tell me essentially why this memorandum  
25 was prepared and sent by you to Mr. Petrone?

1           A       I sent it to Mr. Petrone, and my immediate boss,  
2 Mr. McIntire, to assure that we have the same understanding  
3 what to expect out of the RAC review. That -- the approach.  
4 I suggest -- that I was taking at the time was the correct  
5 one.

6           Q       Was this memorandum prepared by you without a  
7 request from Mr. Petrone to do so?

8           A       To the best of my recollection.

9           Q       You were just trying to keep Mr. Petrone informed  
10 as to how the RAC process was proceeding, is that correct?

11          A       (Witness McIntire) I have somewhat of a  
12 recollection that I was concerned that it be put down in  
13 writing exactly what the assumptions were. We had had  
14 several discussions on this subject, and came to a general  
15 agreement about the parameters, and this I believe was Mr.  
16 Kowieski's response to a verbal request to put down in  
17 actual written form, so everyone who was concerned would have  
18 a chance to look at it and be familiar with the exact terms  
19 of the RAC review.

20          Q       Mr. Kowieski, I want to ask you about these  
21 assumptions. On page 2 of the November 23rd memorandum,  
22 there are three assumptions which are set forth, and I take  
23 it these are the three assumptions that were made by the  
24 RAC Committee and yourself in reviewing the LILCO Transition  
25 Plan, is that correct?

1 A That is correct.

2 Q And the first assumption, Mr. Kowieski, is the  
3 legal authority question which we have already talked about,  
4 correct?

5 A That is right.

6 Q Now, the second assumption says that all LERO  
7 personnel identified in the Plan will substitute for response  
8 by Suffolk County, which is not participating in radiological  
9 emergency response planning for Shoreham.

10 Do you see that statement?

11 A Yes, I do.

12 Q Can you explain to us, Mr. Kowieski, what this  
13 -- what is this assumption? What is the assumption you were  
14 trying to make here?

15 A Well, for other sites that we -- FEMA Region II  
16 is responsible for, we have state and local participation,  
17 at least at this point in time.

18 The State and local government are involved in  
19 offsite emergency planning. State and local government plan  
20 to respond and protect the public in case of emergency. They  
21 develop a plan. They exercise the plans, and in this case  
22 the situation is different.

23 Since the State of New York and Suffolk County  
24 elected not to participate in the planning process, LILCO  
25 developed the plan, and the Plan, it is my understanding of

1 the reading of the Plan, was designed to substitute, to  
2 replace, the State and local resources.

3 That is the reason for this assumption, sir.

4 Q Is it fair to say, Mr. Kowieski, that this  
5 assumption enabled the RAC Committee to assume that there  
6 would be sufficient personnel to carry out the LILCO Plan?

7 A It would enable the Regional Assistance  
8 Committee to conduct a Plan review. We did not -- I believe  
9 I stated for the record that actually the resources that  
10 are specified in the Plan are adequate or not will be  
11 determined during the exercise.

12 Q Yes, sir. I understand that. Is it fair to  
13 say, however, that by making this assumption, the RAC  
14 Committee was able to assume that there would be personnel  
15 available to LILCO to carry out the LILCO Plan, since there  
16 would not be State and local personnel, emergency response  
17 personnel to do so?

18 A That is correct.

19 Q And the third assumption, Mr. Kowieski, states  
20 that the Plan does not reference the New York State radiological  
21 emergency preparedness plan, and it has been submitted without  
22 a State site specific plan. Do you see that?

23 A Yes, I do.

24 Q Is it fair to say that this assumption was made  
25 because you do not want members of the RAC Committee to



1 make findings regarding the compliance of the LILCO Plan with  
2 NUREG 0654 without there being a site -- State site specific  
3 plan for Shoreham?

4 MR. GLASS: I am a little confused by that  
5 question.

6 MR. MILLER: It is not a good question, and I  
7 will withdraw it.

8 BY MR. MILLER: (Continuing)

9 Q Mr. Kowieski, why don't you tell me what this  
10 third assumption goes to?

11 A (Witness Kowieski) To enable RAC members to  
12 evaluate the Plan against NUREG 0654 under planning criteria,  
13 where you have check mark were the State government should  
14 be involved.

15 And I refer you to NUREG -- for an example,  
16 assignment of responsibility on page 31, NUREG -- Planning  
17 Criteria A-1-A shows State and local government are  
18 responsible for this particular function. And since there  
19 was no State government involved in this process, it was  
20 necessary to make an assumption the Plan is designed to  
21 replace the State and local resources.

22 Q Mr. Kowieski, if a Plan is submitted for FEMA  
23 review, for a RAC review process, without a State site  
24 specific plan, would FEMA find the absence of such a State  
25 plan to be an inadequacy?

1           A       That, again, depends how -- I can only -- it  
2 depends how State elects to design the Plan as such.

3                   For instance, New York State elected to have  
4 a State genetic plan, site specific plan for each site --  
5 State site specific plan, to complement the County Plan.

6                   Other states could elect a different approach.  
7 So I am saying for New York State, the way New York State  
8 elected to design the plans, I would say your statement  
9 is correct.

10           Q       It is fair to say, Mr. Kowieski, isn't it that  
11 New York State does not have a State site specific plan  
12 for the Shoreham plant?

13           A       That is correct.

14           Q       Mr. Kowieski, at the end of this memorandum,  
15 on page 3, you essentially state to Mr. Petrone that if he  
16 has any -- well, if there is a need for you to modify or  
17 change the assumptions, to please let you know.

18                   Did Mr. Petrone ever request that you modify  
19 or change the assumptions that are set forth on page 2?

20           A       No, sir. I believe to the best of my recollection  
21 the request of Mr. McIntire -- I believe we met on a number  
22 of occasions to discuss how we are conducting the Shoreham  
23 Plan review.

24                   To answer your question, no. Mr. Petrone did  
25 not ask me to change my assumption.

1 Q Now, Mr. Kowieski, SC EP 80, which is the  
2 December 22, 1983 letter, was this the letter from the NRC  
3 to FEMA, requesting the RAC to review Revision 3 of the LILCO  
4 Plan?

5 A Yes, sir.

6 Q Can you tell me, Mr. Kowieski, why is it that  
7 the NRC made a specific request to FEMA to review Revision 3  
8 of the LILCO Plan?

9 A (Witness McIntire) The procedure which we  
10 operate under is that any time the NRC requests that FEMA  
11 take action under the M.O.U., that a formal request from the  
12 National Office of the NRC be transmitted to the National  
13 Office of FEMA.

14 Q So, Mr. McIntire, if a plan is submitted and the  
15 NRC requests a review by FEMA, and there is a revision to the  
16 Plan, it is ordinarily the case that you would get a separate  
17 request from the NRC to review the revision?

18 A I will say that is how it has happened in this  
19 case. I wouldn't characterize it any other way.

20 Q If you look please, at SC EP 81. This was the  
21 letter -- memorandum from Mr. Petrone to Mr. Speck, Mr.  
22 McIntire, would you look please at the next to the last  
23 paragraph.

24 Let me ask you, first of all, have you ever  
25 seen this memorandum before?

1 A Yes.

2 Q Did you have any involvement in the preparation  
3 of this memorandum?

4 A Yes.

5 Q Did you write the first draft?

6 A I believe so. The first draft, I believe so.

7 Q Were you requested by someone to draft this  
8 memorandum?

9 A I believe so, yes.

10 Q By Mr. Petrone?

11 A Yes.

12 Q Do you know why he made that request to you?

13 A I believe it was a result of meetings, again,  
14 that we had during the process that periodically we thought  
15 it important that we keep the management in our National  
16 Office informed of new developments within the process.

17 Q Do you see in the second paragraph from the  
18 bottom, Mr. McIntire, the statement: It is counsel's opinion  
19 that FEMA should not take any position relative to the forum  
20 in which challenges to the State's position may be heard.

21 A Yes.

22 Q Can you tell me, Mr. McIntire, what do you mean  
23 by that statement?

24 A It is my recollection that it was counsel's  
25 position that FEMA should not be involved in the question of

1 whether the legal challenges -- the challenges to the legal  
2 authority question should be held in either Federal court  
3 or in State court.

4 Q FEMA should simply sit back and await the outcome?

5 A It was not an area of FEMA involvement.

6 Q Now, in the last paragraph on that page, Mr.  
7 McIntire, there is a statement that says that the agency  
8 has consistently raised the point that there is a need  
9 to resolve the issue of LILCO's legal authority.

10 Do you see that?

11 A Yes.

12 Q And then it says, in the last sentence: FEMA,  
13 I believe, should also give careful consideration to the  
14 Governor's statement that the Plan cannot reasonably assure  
15 the protection of the public.

16 Do you see that?

17 A Yes,

18 Q At the time this memorandum was written, Mr.  
19 McIntire, I take it that there was some discussion within  
20 FEMA as to whether FEMA should be involved in reviewing the  
21 LILCO Transition Plan, is that a fair statement?

22 A The decision to review the Transition Plan had  
23 already been made, and at the time this was written on  
24 January 24th, the review was basically being finalized,  
25 since the RAC meeting was held on the 20th of January, a

1 few days previously.

2 Q Yes, sir. The review had been completed by the  
3 RAC Committee, at least the meeting on January 20th, but the  
4 RAC report had not been sent out of Region II at this time,  
5 had it?

6 A That is correct.

7 Q Now, was there some discussion within FEMA  
8 regarding whether or not the RAC report for the LILCO Plan,  
9 should in fact ever be released?

10 A Yes. The question was asked in the last  
11 paragraph, in which basically it is a request for guidance.  
12 Therefore, we questioned whether the review should continue.

13 Q In fact, it states: We believe -- the we  
14 refers to Mr. Petrone, and I suppose others in Region II,  
15 is that correct?

16 A Right.

17 Q Who would it be other than Mr. Petrone?

18 A Probabily Mr. Kowieski and myself.

19 Q And it ssys: We believe this RAC review of the  
20 LILCO Plan for Shoreham may be counterproductive to all  
21 parties concerned. Therefore, we question whether the  
22 review should continue.

23 And I take it, Mr. McIntire, that Mr. Speck told  
24 Mr. Petrone to continue the review, is that correct?

25 MS. McCLESKEY: I object to the question. We

1 are faced with the fact that the review has been completed,  
2 and I don't understand the relevance of these questions.

3 JUDGE LAURENSEN: Objection is overruled. You  
4 may answer.

5 WITNESS McINTIRE: Could I hear the question  
6 again, please?

7 BY MR. MILLER: (Continuing)

8 Q Well, I was looking at the next to the last  
9 sentence on page 2, of SC EP 81, Mr. McIntire, and I am  
10 asking -- I guess my question was I take it that Mr. Speck  
11 informed Mr. Patrone in Region II that they should, indeed,  
12 continue their review of the LILCO Plan, is that correct?

13 End 8.  
14 Sue fols,

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#9-1-SueT

1 A (The witnesses are conferring.)

2 (Witness McIntire) That is correct. And that  
3 is SC-EP-83.

4 Q Can you tell me, Mr. McIntire, do you know why  
5 Mr. Petrone was advised to continue the review of the LILCO  
6 plan?

7 A No.

8 Q Did you ever have any discussions with Mr. Petrone  
9 in this regard?

10 A No. The memo speaks for itself.

11 Q Is it still your opinion, Mr. McIntire, that  
12 the RAC review of the LILCO plan for Shoreham may be  
13 counterproductive to the parties concerned?

14 A No.

15 Q And why is it that your opinion has changed  
16 since you drafted this letter back in January of this  
17 year?

18 A One of the principal concerns and new informa-  
19 tion at that time was the letter that Mr. Petrone received  
20 from the Governor's Counsel, Mr. Palomino, which formally  
21 informed FEMA of the State's position regarding the  
22 emergency preparedness issue at Shoreham.

23 Q Well, the Governor's position has not changed  
24 since you received that memorandum from Mr. Palomino, has  
25 it?



#9-2-SueT

1           A       That's right. But we have received clarifying  
2 policy guidance from our National Office since that time.

3           Q       And what clarifying policy have you received  
4 from the National Office?

5           A       Continue the review under the provisions that  
6 we had started the review under.

7           Q       Well, you were told by the National Office to  
8 continue your review, but did you receive any other  
9 clarifying policy from the National Office which has helped  
10 to alleviate your concerns regarding the State's position  
11 regarding Shoreham?

12          A       We were -- I was aware now and confident myself  
13 that the National Office was fully cognizant of the  
14 Governor's position and the letter from the Special Counsel,  
15 and that they had provided the policy guidance with that  
16 information at their disposal.

17          Q       Are you saying, Mr. McIntire, that when you first  
18 learned of the State's position opposing the operation of  
19 the Shoreham plant you had concerns about whether the  
20 RAC review should continue for Shoreham?

21          A       When we first were informed directly by Mr.  
22 Palomino of the State's official position, we had a concern  
23 that that information should be communicated in a timely  
24 manner to our National Office to see if that would have any  
25 impact on the current policy of continuing the RAC review.

#9-3-SueT 1

2 This policy and information was communicated,  
3 and the National Office was cognizant of it. And then  
4 they made a policy decision to direct us to continue the  
5 review.

6 Q When it says, Mr. McIntire, the last sentence  
7 of the paragraph before the place we were looking at just  
8 now: If we continue our review in light of the Governor's  
9 stated position, FEMA will have no alternative but to cite  
10 the lack of LILCO's legal authority to implement the plan  
11 and to finalize the review based on the lack of legal  
12 authority.

13 Do you see that statement?

14 A Right.

15 Q Did FEMA, in fact, cite the lack of LILCO's  
16 legal authority to implement the plan and finalize the  
17 review based on the lack of LILCO's legal authority?

18 A Through the asterisked process, we did.

19 Q And looking at SC-EP-82, Mr. McIntire, this  
20 was the letter from the NRC to FEMA requesting that the  
21 review of the LILCO plan continue, correct?

22 A Correct.

23 Q And, as you pointed out, SC-EP-83 was Mr. Speck's  
24 response to Mr. Petrone regarding the request of January the  
25 24th, correct?

A Correct.

#9-4-SueT 1

2 Q Looking at SC-EP-84, the handwritten single  
3 page document, Mr. McIntire, have you ever seen this  
4 document before?

5 A I believe I saw it in the work that I did in  
6 the response to the Freedom of Information request by  
7 Suffolk County.

8 Q When it says: Date of Message 2/28, do you  
9 know, is that the date of this document?

10 A That would be my assumption.

11 Q And this document appears to be from Marshall  
12 Sanders, correct?

13 A It was signed by Mr. Sanders, yes.

14 Q And who is he?

15 A Mr. Sanders is a Branch Chief in the Office of  
16 Technological Hazards in our Washington office.

17 Q And it's a copy to Mr. Krimm. Do you see  
18 that?

19 A Yes, I do.

20 Q And who is Mr. Krimm?

21 A Mr. Krimm is the Associate Director of the  
22 Office of -- excuse me, the Associate Director of the  
23 State and Local Program Support and is head of the Office  
24 of Natural and Technological Hazards in our Washington  
25 office.

Q And it looks like the originator of this is J.

#9-5-SueT 1

Cleary; would that be correct?

2

A I believe that is Gary J. It would probably be Gary Johnson.

3

4

MR. GLASS: Mr. Miller, I do have some question as to the relevancy of this document.

5

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MR. MILLER: I'm getting to that.

7

MR. GLASS: I realize there is no date on it as far as the year, but by reading the contents, it is apparent to me that this is not an '84 document. It probably was an '83 document, because of the use of the word "anticipated NRC request."

10

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12

And that's why I do wonder whether there is any relevance at this particular proceeding here.

13

14

MR. MILLER: I prefer the testimony to be coming from the witnesses, Mr. Glass.

15

16

MR. GLASS: Okay. This is not testimony. This is a question as to the relevance of this document.

17

18

Can you tell me why this document is relevant? If it's over a year old and is dealing with the prior request or anticipated prior request dealing with another version of the plan, which is not presently before this body, that is the nature of my objection.

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JUDGE LAURENSEN: You are objecting to the questions based on the document; is that right?

24

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MR. GLASS: Yes. I just don't see where the

#9-6-SueT 1

2 relationship has been brought in to the present plan before  
3 this Board.

4 JUDGE LAURENSEN: I think perhaps then you  
5 should lay a proper foundation as to the witness' knowledge  
6 concerning this particular document, especially as to the  
7 date of its issuance.

8 MR. MILLER: I thought Mr. McIntire had already  
9 told me that he thought the date was 2/28/1984.

10 WITNESS MC INTIRE: No, I did not say. I said  
11 2/28.

12 BY MR. MILLER: (Continuing)

13 Q Do you know the date of this document, Mr.  
14 McIntire?

15 A No, I don't. But it is my assumption, based  
16 on the personnel involved, that it would be 2/28/83.

17 Q This document talks about an anticipated  
18 request to review the LILCO plan for Suffolk County,  
19 correct?

20 A Yes.

21 Q It says for Suffolk County, but I assume it  
22 means for the Shoreham plant.

23 When did the NRC request FEMA to review the  
24 LILCO plan for the first time? When was the first time  
25 the NRC made such a request of FEMA?

A (The witnesses are conferring.) Okay. My

#9-7-SueT

1 recollection, it was June 1st, 1983 when Revision 0 was  
2 sent to the FEMA National Office by NRC.

3 Q Mr. McIntire, this document states, "The letter  
4 should reject the request on the basis that it is deficient,  
5 prima facie, since our standards inherently require State  
6 and local capability, a commitment which obviously is not  
7 there since NRC is reviewing the utility prepared plan,  
8 pursuant to Section 5 of their Authorization Act."

9 Do you see that comment?

10 A Yes.

11 Q Now I gather, Mr. McIntire, that the position of  
12 the author of this document was rejected by FEMA National  
13 Office; is that correct?

14 A I have no knowledge --

15 MR. GLASS: I object as to the relevancy of any  
16 question dealing with this particular document.

17 MR. MILLER: Judge Laurenson --

18 MR. GLASS: They have established that this  
19 deals with something that took place in June of '83; it  
20 deals with Revision 0; it deals with, as Mr. McIntire  
21 indicated, he identified it was probably '83 because of  
22 the people involved with that that were not involved in  
23 the later material. And I just do not see the relevancy.

24 MS. MC CLESKEY: In addition, I object to any  
25 further questions on the document, because it is clear from

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1 the witness' testimony, from the document, and from Mr.  
2 Glass' representations that the reference in this memo  
3 to the LILCO-prepared plan for Suffolk County is not to  
4 any LERO plan. It's to, as Mr. Miller is well aware, the  
5 plan that was taken from papers prepared by Suffolk County  
6 and that relied upon Suffolk County employees and State  
7 employees to implement an offsite emergency plan for  
8 Shoreham.

9 And there was such a plan kicking around in  
10 January and February of 1983.

11 MR. MILLER: Judge Laurenson, I'm not well  
12 aware of anything with respect to Ms. McCleskey's comments,  
13 because I'm trying to determine what this document goes to.

14 I would point out, Judge Laurenson, with respect  
15 to the relevancy this document raises a very, very clear  
16 question. Is there the authority to review a utility plan.  
17 That's the question before this Board. Therefore, the  
18 question is relevant and the date of the document is not  
19 important. The issue is the same now as it was a year ago  
20 as it was when LILCO first came out with the LILCO Transition  
21 Plan.

22 MS. MC CLESKEY: Well, in addition, I have  
23 another objection which is the issue that is before this  
24 Board is not whether the Board has the authority to review  
25 a utility plan. That was decided a long time ago. That's

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why we are here.

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MR. MILLER: I'm not talking about the Board's authority. I'm talking about this letter states that the request should be rejected on the basis that it is deficient, prima facie, since our standards inherently require State and local capabilities.

It's talking about FEMA. I think that's pretty obvious. I'm not talking about the Board's authority.

MS. MC CLESKEY: Well, finally, assuming, which I think is wrong, that this memo does have something to do with the LERO plan, not the Suffolk County plan that LILCO completed and submitted to the Disaster Preparedness Commission of New York State, I think that the question of whether FEMA had the legal authority to review a plan has long since been reviewed and answered, in fact, because they reviewed a plan.

And we are wasting a lot of time talking about this issue.

JUDGE LAURENSEN: I agree with the last comment, that we have spent more time talking about this than it's worth. It is a very preliminary draft. On the other hand, I think to the extent the County wants to pursue this they may do that, and use their time.

The objection is overruled.

BY MR. MILLER: (Continuing)



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Q Mr. McIntire, you apparently don't remember where we were.

2

3

A (Witness McIntire) True.

4

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Q This memorandum, Mr. McIntire, states that the request from the NRC should be rejected on the basis that it is deficient, prima facie, since our standards inherently require State and local capability.

8

Do you see that comment?

9

A Yes.

10

11

Q That comment was based upon the fact that the LILCO plan was a utility plan; is that correct?

12

13

A I have no basis of knowledge of why that statement was made.

14

15

Q Is that an issue which has been discussed within FEMA, to your knowledge, Mr. McIntire?

16

A Yes.

17

18

19

Q Are there still -- there is still discussion within FEMA as to whether FEMA should be reviewing a utility plan without State and local capability?

20

A Not to my knowledge.

21

Q Mr. Kowieski?

22

A (Witness Kowieski) I concur with Mr. McIntire.

23

24

25

Q Mr. Kowieski, looking at SC-EP-85, this was the cover letter, I take it, to the final version of the RAC report that was sent to members of the RAC Committee,

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including Mr. Keller and Mr. Baldwin; is that correct?

2 A That's correct.

3 Q And this memorandum was dated March 15, 1984,  
4 which was also the date that the final RAC report was sent  
5 from FEMA to the NRC; is that correct?

6 A That's also correct, according to my records.

7 Q Mr. Kowieski, it's fair to say, isn't it,  
8 that the members of the RAC Committee, with the exception  
9 of yourself, did not see any version of the RAC report  
10 from the time of the January 20th meeting until they were  
11 sent the final RAC report on March 15 of 1984? Isn't  
12 that correct?

13 A Except Mr. Baldwin, who is a consultant to  
14 FEMA.

15 But let me add, and I hope the record is clear,  
16 that we agreed on the final version. When I say "we," the  
17 RAC Committee, the January 20 meeting, we agreed on the  
18 final version of the document. There were no substantial  
19 changes made to the document.

20 The changes that I made in working with Mr.  
21 Baldwin and Mr. Acerno constituted only the polishing of  
22 the document. So, in my opinion, the final document  
23 consisted the same information as the document that we,  
24 the Regional Assistance Committee, agreed on on January the  
25 20.

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2 Q My point, Mr. Kowieski, is that the members of  
3 the RAC Committee were not asked whether they agreed with  
4 the final RAC report any time from January 20th when the  
5 meeting was held of the RAC Committee until the time the  
6 report was issued in final form to the NRC; isn't that  
7 correct?

8 A The RAC Committee, individual RAC members, were  
9 in contact, continuous contact, with me as the RAC Chairman  
10 after the January 20 meeting. And they asked me, each one  
11 of them was very curious as to what the final document will  
12 look like, and I assure all of them that whatever we agreed  
13 upon on January the 20 will stay in the final document.

14 Q But, Mr. Kowieski, the members of the RAC did  
15 not have any document to review until they received the  
16 final RAC report on March 15 of 1984; isn't that correct?

17 A They had a draft document, a marked up copy of  
18 the document, that they used. It was distributed at a  
19 January the 20 meeting. And they took their own notes, own  
20 comments, the way the final document would look like.

21 In other words, the changes that we agree on on  
22 the January the 20 meeting.

23 Q There were changes following the January 20th  
24 meeting to the draft document that was used at the  
25 January 20th meeting, correct?

A (Witness McIntire) I believe Mr. Kowieski said

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2 that the changes made at the January 20th meeting were  
3 incorporated at that time by the members of the RAC at  
4 the meeting.

5 Q There were changes made following the January  
6 20th meeting, though; isn't that correct?

7 A (Witness Kowieski) There was no changes, only --  
8 it was, as I stated, we only reviewed the document to make  
9 certain it's clear. We polished the language. We reviewed  
10 for consistency, and there were no changes made after  
11 January the 20 meeting.

12 Q Mr. Kowieski, the RAC report is set up in a  
13 format where you have a statement of identification of  
14 the NUREG 0654 element, followed by review comments,  
15 followed by a rating; is that correct?

16 A That's correct.

17 Q And the review comments which were set forth in  
18 the final RAC report, the language setting forth these  
19 review comments was put into final form by you and Mr.  
20 Baldwin following the January 20th meeting, correct?

21 A Well, again, I have to be very careful again.  
22 When you tailor your words, okay, I have to be very careful  
23 when I answer. Okay.

24 We agreed on the final document, on the final  
25 language at the January the 20 meeting. However, the comments  
made had to be inserted, incorporated. So, that's what I

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2 did and Mr. Baldwin. We incorporated the comments into the  
3 document. Then we gave for typing and proofread. It was  
4 our effort. It was limited to only editorial changes and  
5 modifications.

6 Q Mr. Kowieski, are you telling me that the  
7 language in these review comments was discussed and agreed  
8 upon during the January 20th meeting?

9 I'm talking about the language in this final  
10 report?

11 A Yes, sir, the majority of it.

12 Q Mr. Keller, do you agree with that statement?

13 A (Witness Keller) It's not my recollection, not  
14 in toto. My recollection is that, as Mr. Kowieski has  
15 testified, the concept and the direction that the comment  
16 would take was discussed. The exact wording was not dis-  
17 cussed in most cases. In some cases, I think it was.

18 The ones that I recall right now, in particular,  
19 were some of the ones which, as we have discussed in  
20 deposition, the issue of plant status and protective action  
21 recommendations based on plant status, which was not in  
22 the plan and was found to be deficient, which came up  
23 primarily through verbal discussion in the RAC meeting.  
24 Those kinds of words were discussed, because there was  
25 nothing on the paper in the draft. Some of that wording  
was discussed in more detail.

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1 In many cases, my recollection is we decided  
2 to remove a certain section of what was in the draft, beef  
3 up another section that was in the draft. I wouldn't say  
4 that the exact wording in all cases was discussed.

5 (Witness Kowieski) Well, I concur in Mr.  
6 Keller's description. But what I'm saying, that the  
7 majority of comments presented and agreed upon at the  
8 January 20 meeting remained unchanged. When we agreed on  
9 the substance, let's say we agreed that the issue of the  
10 plant condition has to be addressed. And this is the  
11 issue that will lead to the inadequate rating. Regardless  
12 of how you present the language in the sentence, okay, I  
13 felt was irrelevant.

14 We agreed on the concept. We agreed on the  
15 substance.

end #9

Reb flws

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1 Q Mr. Kowieski, my point is that you may have  
2 agreed on the substance, but the language itself was  
3 written by you and Mr. Baldwin following the January 20  
4 meeting; isn't that correct?

5 A In instances like cited by Mr. Keller, where  
6 we decided that the draft document has to be modified,  
7 we decided at January 20 meeting that the draft document,  
8 working document presented to RAC members had to be  
9 modified; the final polishing, the final sentences  
10 were constructed and built by me and Mr. Baldwin, that  
11 is correct.

12 Q And the members of the RAC were not sent any  
13 draft of the RAC report following the January 20 meeting?  
14 In fact, the next communications in writing from you  
15 was when they received the final RAC report on March 15?

16 MR. GLASS: I object to that. It is a compound  
17 question. If you could break it into two portions, I  
18 think that --

19 MR. MILLER: Everyone understands the question,  
20 Mr. Glass.

21 MR. GLASS: But you are asking for two  
22 responses, and the responses may be a yes to one and no  
23 to the other. And I think to have a clear record,  
24 that should be broken into two things.

25 MS. MC CLESKEY: I further object to it because

1 it has been asked and answered three times.

2 JUDGE LAURENSEN: Objection as to the form is  
3 sustained.

4 BY MR. MILLER:

5 Q Mr. Kowieski, it is true that following the  
6 January 20th meeting, the members of the RAC committee,  
7 with the exception of Mr. Baldwin, did not see another  
8 version of the RAC report until March 15, 1984 when the  
9 report was sent in final form to the NRC by FEMA; isn't  
10 that correct?

11 A That is correct. And as I stated, except  
12 Mr. Keller who is a consultant to FEMA. I am sorry.  
13 I misspoke. Mr. Baldwin.

14 Q Would you look, please, at SCEP-86. This is  
15 the letter from Mr. Speck to Mr. Dircks, dated March 15,  
16 1984.

17 Mr. McIntire, this is a copy of the cover letter  
18 which accompanied the final RAC report; isn't that the  
19 case?

20 A (Witness McIntire) Correct.

21 Q And Mr. Kowieski, let me ask you this question.  
22 Where it states at the bottom end of the second paragraph,  
23 "FEMA headquarters, assisted by the FEMA Region II  
24 regional director and staff, directed this technical  
25 review," referring to the Argonne Laboratories review, that



1 statement is inaccurate, isn't it?

2 A (Witness Kowieski) That is correct.

3 Q And, Mr. Kowieski or Mr. McIntire, the last  
4 sentence on page 1 of this letter from Mr. Speck talks  
5 about the legal authority issue and it says that the  
6 legal concern did not affect the FEMA rating given to the  
7 technical or operational items relating to NUREG elements.

8 Do you see that statement?

9 A (Witness McIntire) Yes.

10 Q The reason this is so is because of the  
11 assumption made by the RAC regarding LILCO's legal  
12 authority, correct?

13 A That would be my assumption.

14 Q Would you look, please, at SCEP-87,  
15 gentlemen. Have you ever seen this chronology before,  
16 anyone on the panel?

17 A I believe I saw it as I was helping in the  
18 Freedom of Information request.

19 A (Witness Baldwin) I have not.

20 A (Witness Kowieski) I have not.

21 Q Do you know who prepared this chronology,  
22 Mr. McIntire?

23 A (Witness McIntire) No.

24 Q Mr. McIntire, would you look at page 3 of  
25 SCEP-87; across from the date 6/23/83 there is a discussion

1 of the findings that were found by Argonne National  
2 Laboratory, correct?

3 A Yes.

4 Q And if I interpret this correctly, that states  
5 that Argonne, in their review of revision 0 of the LILCO  
6 plan, found there to be 34 inadequacies, correct?

7 A Correct.

8 Q And on page 7 of this document, Mr. McIntire,  
9 there is a discussion of the number of inadequacies found  
10 by the RAC review of the LILCO plan, correct?

11 A Yes.

12 Q Across from the date 2/22/84?

13 A Yes.

14 Q And the RAC found 32 inadequacies, correct?

15 A Yes.

16 Q And it states that there were 24 elements concern-  
17 ing the legal authority of LILCO, correct?

18 A Can I go back to my previous answer?

19 I think to be fully responsive to it, there  
20 were 32 inadequacies based on a technical review of  
21 revision 1.

22 A (Witness Keller) This document says that  
23 there -- I am not sure. I have just seen it. But there  
24 was never a full RAC review of revision 1 completed.  
25 There was never a meeting. Right? This we think should be

1 revision 3.

2 A (Witness Kowieski) I concur. I think that  
3 is a typo. It is supposed to be revision 3.

4 Q There were 32 inadequacies found by the RAC  
5 for revision 3 of the LILCO plan?

6 A That is correct.

7 MR. GLASS: Hold on. I don't want the record  
8 to be unclear, but is this saying 6/23/83, and if it  
9 is --

10 MR. MILLER: We are on page 7 now.

11 MR. GLASS: I'm sorry.

12 BY MR. MILLER:

13 Q Mr. Kowieski, is it an accurate statement, as  
14 set forth on page 7 of SCEP-87, that 24 elements  
15 concerned legal questions? In other words, 24 elements  
16 of the RAC report for the LILCO plan were asterisked;  
17 is that correct?

18 A (Witness McIntire) That is what the statement  
19 says.

20 A (Witness Kowieski) That's correct.

21 Q And it says in this document that 19 elements  
22 that were found inadequate in the Argonne review of  
23 revision 0 were found adequate in the RAC review of  
24 revision 3; is that correct?

25 A (Witness McIntire) That is what it states.

1 Q I am not just asking what the document states.  
2 Do you know if, in fact, 19 elements found inadequate by  
3 Argonne Laboratories were found adequate by the RAC review  
4 of revision 3?

5 A (Witness Kowieski) I am not aware -- I don't  
6 know this is the fact. I purposely did not make  
7 any attempt to compare or distribute the review of revision 0,  
8 which was not conducted by RAC committee. I did not want  
9 to influence in any way the RAC members when they  
10 initiated an independent and full review of LILCO revision 3.

11 Q Do you know, Mr. Kowieski, if, in fact, there  
12 were 24 elements of the RAC report for the LILCO plan  
13 that concerned or raised concerns about LILCO's legal  
14 authority?

15 A Based on my notes, there were 24 elements that  
16 were affected by issue of legal authority.

17 Q Can you tell me how many of those 24 were rated  
18 inadequate?

19 A Out of -- six out of 24 were rated inadequate.

20 Q Would you look, please, at SCEP-88.

21 Mr. Kowieski, you prepared the first page, at  
22 least, of this document; is that correct?

23 A That's correct.

24 Q Did you also prepare the briefing paper for  
25 Mr. Petrone?

1           A     To the best of my recollection, that is my  
2     recollection.

3           Q     Why was such a briefing paper being prepared,  
4     Mr. Kowieski?

5           A     (Witness McIntire) It is a common practice,  
6     in our region, whenever the region does something that  
7     might be newsworthy or of interest to a significant  
8     segment of the population, that we prepare a briefing  
9     paper of the key points so that the regional director  
10    will be able to be fully responsive to requests for  
11    information regarding such an action.

12          Q     Mr. Kowieski, is it fair to say that pages 2  
13    and 3 of the briefing paper attached to EP-88 set forth  
14    to your opinion the primary problems identified in the  
15    LILCO plan?

16          A     (Witness Kowieski) I would characterize, it was,  
17    in my opinion, my opinion, felt that the highlights of  
18    the RAC plan review of LILCO transition plan, revision 3,  
19    not necessarily this list is inclusive.

20                   I felt, based on my experience, based on  
21    experience at other plants, I felt this should suffice.

22          Q     What you are saying, Mr. Kowieski, is that  
23    there certainly could be other problems, but this was a  
24    listing of your opinion of some of the principal problems  
25    of the LILCO plan?

1 A In my judgment, that is correct.

2 Q And is it fair to say that page 4 of the briefing  
3 paper sets forth the legal authority concerns, your opinion  
4 of the legal authority concerns, which existed in the LILCO  
5 plan?

6 A Legal concerns that we identified in the  
7 LILCO transition plan, revision 3, that is correct.

8 Q Is this listing on page 4 meant to be an all-  
9 inclusive listing?

10 A No, sir.

11 Q And there is another chronology attached to  
12 this document, Mr. Kowieski. Did you prepare this  
13 chronology?

14 A Assisted -- I prepared this chronology  
15 assisted by, I believe, by Mr. Acerno.

16 Q Would you look, please, at -- let me just have you  
17 look quickly at SCEP-89. My questions on this document  
18 really go to the last two pages.

19 Frankly, I didn't break up the document because  
20 this is the way it was produced to the county.

21 There is a listing on the next-to-last  
22 page which sets forth again elements that were found  
23 adequate or inadequate.

24 A (Witness Keller) Is this page entitled Summary  
25 Sheet?

1 Q Yes. The page is entitled Summary Sheet.

2 I take it, Mr. Kowieski, that again you are  
3 unable to tell me whether the breakdown, based on the  
4 Argonne review, is correct or incorrect?

5 A (Witness Kowieski) I won't be able to tell  
6 you whatever was done by Argonne. The numbers given here  
7 reflect the number actually that resulted of Argonne  
8 review.

9 Q If you look, please, at SCEP-90, which is the  
10 last document, Mr. Kowieski, is this list an accurate  
11 list of the members of the RAC who reviewed revision 3 of  
12 the LILCO plan?

13 (Pause.)

14 A Yes, sir.

15 Q And there were two members of the RAC that  
16 were different at the time the RAC was reviewing revision  
17 1 of the LILCO plan, correct?

18 A That is correct.

19 Q And could you just state, Mr. Kowieski, which  
20 agencies had different members at the time revision 1  
21 was being reviewed?

22 A EPA and NRC.

23 (Pause.)

24 Q Let me ask the panel as a whole, has any  
25 member of the witness panel had any meetings with LILCO or

1 LILCO representatives during the course of this week?

2 A (Witness Keller) Passing in the hall you mean?  
3 Could you define meeting?

4 Q I am not talking about passing someone in the  
5 hallway.

6 A No.

7 A (Witness McIntire) No.

8 A (Witness Baldwin) No.

9 A (Witness Kowieski) No.

10 MR. MILLER: Judge Laurenson, I am about to go  
11 back to a specific contention in the testimony. Maybe  
12 we should just take the lunch break at this point.

13 JUDGE LAURENSEN: All right. We will  
14 reconvene at 2:00 o'clock.

15 (Thereupon, at 12:37 p.m., the hearing was  
16 recessed, to reconvene at 2:00 p.m., this same day.)

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END 10



AFTERNOON SESSION

(2:00 p.m.)

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3 JUDGE LAURENSEN: All right. The hearing  
4 is resumed.

5 Mr. Miller?

6 BY MR. MILLER: (Continuing)

7 Q Gentlemen, yesterday when we concluded questions  
8 regarding Contentions 27 to 32, and Contention 34, I wanted  
9 to ask you about the basis for the testimony with respect  
10 to the RAC report.

11 Would you agree with me, first of all, that  
12 Contentions 28 to 32, and 34 generally involve the area  
13 of communications among emergency response personnel?

14 A (Witness Baldwin) Yes.

15 Q And is it fair to say, gentlemen, that the  
16 primary basis for the testimony submitted by FEMA on these  
17 contentions is set forth on pages 18 to 20 of the RAC  
18 report?

19 A (Witness Keller) I think we are addressing an  
20 issue that we covered yesterday. We had made a -- in answer  
21 to your question of yesterday, that we weren't sure those  
22 were the only pages, and we said we would look it up last  
23 night.

24 We have looked it up, and the pages that you  
25 listed yesterday, we didn't find any in addition to that,

1 but I am not sure those are the same pages that you just gave  
2 this time.

3 Q Yes, sir. I think we were talking about two  
4 different issues, though. I am not asking about Contentions  
5 28 through 32, and 34, which involves communications among  
6 emergency workers, and is it fair to say that the RAC Report  
7 relied upon by FEMA for its testimony addresses these issues  
8 on pages 18, 19, and 20?

9 A Those are the primary areas which cover those  
10 issues.

11 Q And at this time, Mr. Keller, do you know of any  
12 other areas in the RAC report which would address those  
13 contentions?

14 A Again as yesterday, I am not absolutely positive  
15 that some part of some other criteria might not involved  
16 communications, but those are the primary areas.

17 Q Turning to page 46 of the FEMA testimony, it  
18 begins discussion of Contention 55. You reference in your  
19 answer to Question 58, the answers to Contentions 26.C and  
20 26.D, correct?

21 A (Witness Kowieski) That's correct.

22 Q And the question poses: Does LILCO Plan  
23 adequately provide for the prompt notification and mobilization  
24 of key command and control personnel to ensure that the fixed  
25 siren system can be activated in a timely fashion.

1                   Could you tell me your answer to that question,  
2 gentlemen?

3                   A           (Witness Keller) Yes. The LILCO Plan does  
4 adequately provide for that.

5                   Q           Mr. Keller, are you aware -- and I think you are  
6 from yesterday's discussion, that under the LILCO Plan, in  
7 the event of a general emergency requiring immediate  
8 protective actions, there is provision in the LILCO Plan for  
9 activation of the LILCO siren system by customer service  
10 personnel rather than the Director.

11                  A           That is my understanding.

12                  Q           And that provision would apply if the Director  
13 could not be contacted within a ten minute time period,  
14 correct?

15                  A           That is my understanding.

16                  Q           Mr. Keller, to your knowledge, does the LILCO  
17 Plan anywhere provide for activation of the sirens by anyone  
18 other than the Director, with the exception of this instance  
19 of a general emergency requiring immediate protective actions?

20                  A           (Witness Kowieski) To the best of my recollection,  
21 I understand also controller -- director or manager of the  
22 control room can activate the siren system.

23                  A           (Witness McIntire) It is also my understanding  
24 that the coordinator of public information can also activate  
25 the siren system.

1           Q       Let me take them one at a time. Mr. Kowieski,  
2 first of all, is it your understanding that the manager of  
3 local response --

4           A       Say that again, sir.

5           Q       Is it your understanding that the manager of  
6 local response can activate the siren system?

7           A       My understanding of the Plan is, my recollection  
8 -- I would have to go back again to the Plan or procedures,  
9 but there are options.

10                   One of the options is that the Hicksville  
11 customer service office could activate the siren system in  
12 case there is -- in case the plant would reach general  
13 emergency classification level.

14                   And also, another option is that sirens could  
15 be activated from the control room.

16           A       (Witness Baldwin) Yes. And it also says that  
17 a backup encoder is located at the Brookhaven substation.

18           Q       Let me distinguish, gentlemen, with you questions  
19 regarding from where in the source of siren activation and  
20 whom under the LILCO Plan has the authority to activate the  
21 sirens.

22                   Now, you say, Mr. Kowieski, that the sirens can  
23 be activated from the control room, and Mr. Baldwin, you also  
24 point out the sirens can be activated from Brookhaven.

25                   In that regard, there are encoders to activate

1 the sirens at those two locations, isn't that correct?

2 A (Witness Baldwin) That is correct. Let me  
3 clarify. You said from Brookhaven. It is from the Brookhaven  
4 substation is what the Plan says.

5 Q Yes, sir. Now, putting to one side where encoders  
6 are located to activate the sirens, my initial question went  
7 to whom under the LILCO Plan has the authority to activate  
8 the sirens, and with the exception of customer service  
9 personnel being authorized to activate the sirens in the  
10 event of a general emergency requiring immediate protective  
11 actions, is there anywhere else in the Plan where it is  
12 specified that someone other than the director can activate  
13 the siren system?

14 A (Witness Kowieski) Procedure -- OPIP 3.3.4,  
15 page 1 of 7, Section 3 states if general emergency requiring  
16 immediate protective action recommendations is the first  
17 notification of the emergency, the customer service supervisor  
18 will implement this procedure, if contact with the director  
19 of local response cannot be made within ten minutes of  
20 the receipt of notification.

21 Q Yes, sir. That is the exception I was talking  
22 about. The general emergency requiring immediate protective  
23 actions, the director cannot be located, then the customer  
24 service supervisor is authorized to activate the sirens.

25 My question is, can you point me to any other

1 instance under the LILCO Plan where someone is authorized  
2 to activate the sirens other than the Director of local  
3 response?

4 A (Witness Baldwin) Well, it says in that  
5 same procedure, on page 2, that is Procedure 3.3.4, Section  
6 5.0 C.1, it says that at the direction of the director of  
7 local response, coordinator of public information contacts  
8 WALK, EBS radio station over commercial telephone.

9 Q Mr. Baldwin, though, that section refers to  
10 a general emergency requiring immediate protective action,  
11 correct?

12 A That is correct. It says in the introduction  
13 to that section, it says: In the unlikely event that  
14 prior to activation of the EOC, notification from the plant  
15 is a general emergency, and includes a recommendation for  
16 sheltering or evacuation, the following procedure will be  
17 used -- and then that follows.

18 Q Mr. Kowieski, I want to make sure the record  
19 is clear as to the answer of the panel on this question.

20 Is it fair to say that in the event of a --  
21 let me start again. Is it fair to say that with the exception  
22 of a general emergency requiring immediate protective action,  
23 that there is no authorization under the LILCO Plan for anyone  
24 other than the Director of local response to activate the  
25 siren system?

1 A Not that I am aware of.

2 A (Witness Kowieski) That is my recollection.

3 Q To your knowledge gentlemen, it is a requirement  
4 of the LILCO Plan that the sirens be activated simultaneously  
5 with broadcast of the EBS message via WALK radio, isn't that  
6 correct?

7 A That is not correct.

8 A (Witness Keller) Coordinated I would accept.  
9 Simultaneously, no.

10 Q Let's go on to Contention 56, gentlemen. That  
11 is on page 47 of your testimony. The question posed -- the  
12 first question is: Will the LILCO Plan provide an adequate  
13 backup alert and notification system in the event of a  
14 partial or total failure of the LILCO siren system.

15 Do you see that?

16 A (Witness Kowieski) Yes, I do.

17 Q Could you tell me the answer to that question?

18 A I don't understand your question. We provide  
19 an answer.

20 Q Well, are you able to give me a yes or no answer  
21 to the question posed?

22 A Yes.

23 Q And what is your answer?

24 A My answer is that the system identified in the  
25 LILCO Plan, the backup system, is adequate to provide

1 notification within fifteen minutes.

2 Q Within fifteen minutes?

3 A Forty-five minutes. Sorry.

4 Q Mr. Kowieski, the backup system that you are  
5 referring to is LILCO's system of using route alert drivers,  
6 correct?

7 A That is correct.

8 Q And it is your testimony that that system of  
9 using route alert drivers could provide notification to the  
10 public within 45 minutes?

11 A Our testimony is that the provisions described  
12 in the Plan meets the NUREG requirement. It should be noted  
13 that there is a requirement of independent alert notification  
14 test, which would be conducted, and usually is conducted  
15 independently even of the exercise.

16 And this is done in accordance with the FEMA  
17 Guidance No. 43.

18 Q Mr. Kowieski, are you aware of how, under the  
19 LILCO Plan, LILCO would be advised of siren failure?

20 A I understand there is a Marketing Evaluation,  
21 Incorporated, that will perform the survey of the sirens,  
22 and upon completion of this survey, or during that survey,  
23 LILCO and LERO will be advised if all the sirens have been  
24 activated.

25 Q Is it fair to say, Mr. Kowieski, that under your



1 understanding of the LILCO Plan, the only way LILCO would be  
2 advised of a failure of sirens, or the siren system, would  
3 be through Marketing Evaluation?

4 A That is what is described in the Plan. There  
5 are other means -- the failure of the system could be  
6 verified, and LILCO would be notified about the failure of  
7 this system, but as far as the Plan is concerned, the Plan  
8 specifies or assigns the responsibility to Marketing  
9 Evaluation, Incorporated.

10 Q Let me make sure I understand, Mr. Kowieski.  
11 Did you say that there are other means that LILCO could  
12 learn about siren failure?

13 A There could be some informal arrangements which  
14 we are not aware of.

15 Q Now, under the reliance by LILCO on Marketing  
16 Evaluation to notify LILCO if there are failures of the  
17 sirens, isn't it true that Marketing Evaluations has stated  
18 that it would require 90 minutes to verify that all sirens  
19 have sounded?

20 A That is not my understanding. My understanding  
21 is that verification would be initiated immediately and  
22 completed within ninety minutes.

23 Q And is it your understanding, Mr. Kowieski, that  
24 in making this evaluation, Marketing Evaluations would  
25 telephone two individuals within each siren territory?

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A (Witness Baldwin) Yes, that is correct. That is how the verification is described in the Plan and in their letter of agreement with LILCO describes what they would do.

End ll.  
Sue fols.

#12-1-SueT

1 Q And is it true that there are eighty-nine siren  
2 locations under the LILCO plan?

3 A (Witness Baldwin) That is correct.

4 Q Mr. Baldwin, I take it from your understanding of  
5 the Marketing Evaluations letter that Marketing Evaluations  
6 will contact two individuals per siren territory so that it  
7 might require more than two telephone calls for each siren  
8 territory?

9 A I would have to check that letter of agreement.  
10 I remember the ninety minutes to complete the survey. I  
11 don't recall a specific reference to two calls per siren  
12 being made.

13 (Witness Kowieski) You would like us to verify  
14 in the plan and procedures?

15 Q Well, do you have that Marketing Evaluations  
16 letter?

17 A (The witnesses are going through documents.)

18 Q It's Appendix B, Page 53 I think.

19 A (Witness Baldwin) Yes, I see it now. It  
20 stipulates in the fourth paragraph, the second sentence:  
21 The survey will consist of calling two residents in each  
22 siren location and asking if they have heard the siren.

23 Q So, would you agree with me, Mr. Baldwin, that  
24 it might require more than two telephone calls per siren  
25 territory?

#12-2-SueT1

A It could conceivably, yes. Certainly.

2 Q And at a minimum there would be a hundred and  
3 seventy-eight telephone calls needed to make verification  
4 of the eighty-nine sirens?

5 A That is correct.

6 Q Now, do you know how many representatives of  
7 Marketing Evaluations would be used in conducting this  
8 evaluation of the LILCO siren system?

9 A Just a moment. I will have to read the letter  
10 more carefully.

11 (The witness is looking at a document.)

12 Q I don't believe the letter states the number,  
13 Mr. Baldwin.

14 A I don't believe it does either, but I do see  
15 that it states at the second from the last sentence in the  
16 fourth paragraph the information we have contained in the  
17 footnote to our revised response, which says: The  
18 completion of the survey will be within ninety minutes of  
19 pager notification.

20 And I infer pager notification to refer to  
21 pager notification of Marketing Evaluations, Incorporated.

22 (Witness Keller) And that doesn't necessarily  
23 mean within ninety minutes of the sounding of the siren.

24 Q Well, Mr. Keller, assuming an emergency at the  
25 Shoreham plant that would require immediate notification

#12-3-SueT

1 to the public --

2 A I said not necessarily. With the assumption I  
3 think you are starting, that would be one of the cases where  
4 it would.

5 Q And under that situation, Mr. Keller, according  
6 to the letter relied upon by LILCO, it could take as long  
7 as ninety minutes to complete verification of whether the  
8 sirens have all activated?

9 A That's what the letter says. It could take  
10 longer. But the letter says they would complete it in  
11 ninety minutes.

12 Q And is it still your testimony, gentlemen, that  
13 the LILCO backup system using route alert drivers could be  
14 completed within forty-five minutes?

15 A (Witness Baldwin) Yes, because -- it is my  
16 opinion that it could be, because, as Mr. Kowieski has  
17 mentioned, we would expect other informal arrangements that,  
18 for instance, LERO workers would be trained to listen for  
19 the sirens and to notify back.

20 Q You are making assumptions, aren't you, Mr.  
21 Keller? I mean, Mr. Baldwin, I'm sorry.

22 A Yes, I have assumed in that case.

23 Q I take it, Mr. Baldwin, that you would agree with  
24 me that under NUREG 0654 LILCO's route alerting procedures  
25 must provide assurance of one hundred percent coverage of

#12-4-SueT 1

the EPZ within forty-five minutes?

2           A       (Witness Kowieski) I think it refers in NUREG  
3 0654, refers to design basis.

4           Q       Mr. Kowieski, does that answer my question?

5           A       In my opinion, it does.

6           Q       Why don't you explain what you mean, then,  
7 when you say it refers to design basis?

8           A       The way the system, the system should be  
9 capable of notifying the population.

10          Q       Within forty-five minutes?

11          A       That's correct.

12                 (Witness Keller) But your question was, must  
13 assure, the wording. And there is a difference between a  
14 must insure and a design basis criteria. And I think that  
15 was the difference we were alluding to.

16                 (Witness Kowieski) And capable of, because as  
17 I stated the formal test will be conducted at a later date.  
18 It's an independent alert notification test.

19          Q       You refer to the evaluation that would be con-  
20 ducted during an exercise which is referenced in the last  
21 sentence on Page 48 of your testimony, correct?

22          A       (Witness Keller) As Mr. Kowieski pointed out,  
23 the formal, what we call A&N, alert and notification  
24 acceptance test for a particular site is generally not held  
25 in conjunction with an exercise. There is nothing to say

#12-5-SueT

that it couldn't be, but it is generally held separately.

2 Q Well it says, Mr. Keller, route alerting would  
3 be evaluated at an exercise or communications drill.

4 A Or communications drill. And the alert and  
5 notification acceptance test for a given site could be  
6 considered a communications drill.

7 Q Is it your understanding that during communica-  
8 tions drills LILCO sends out route alert drivers to drive  
9 through the siren territories?

10 A In this particular type of drill, which is  
11 discussed, as Mr. Kowieski put it out in a guidance memo-  
12 randum from FEMA Headquarters, each site must have a formal  
13 acceptance of the alert and notification system, both the  
14 "fifteen minute" system and the backup system. And those  
15 are generally evaluated separate, not in conjunction with  
16 a formal FEMA or NRC, Federally-evaluated exercise.

17 And that can be characterized as a communica-  
18 tions drill. There are many kinds of communications drills,  
19 some within the emergency response organization, some be-  
20 tween the emergency response organization and the population,  
21 the sirens or route alerting.

22 Q Mr. Keller, to your knowledge, has LILCO held  
23 any such communications drills as you are talking about to  
24 date?

25 A No.

#12-6-SueT

1 Q Is it fair to say, Mr. Keller, that any evalua-  
2 tion by FEMA regarding the adequacy of LILCO's proposed  
3 backup system using route alert drivers would have to await  
4 either a FEMA-graded exercise or this type of communications  
5 drill that you have referred to?

6 A (Witness Kowieski) That's correct.

7 (Witness Keller) That is correct, not only for  
8 LILCO but for every other plant, every other site, in the  
9 country.

10 Q When you state on Page 47 of your testimony,  
11 gentlemen, that the backup system will be implemented using  
12 LILCO emergency vehicles equipped with public address units,  
13 is it your understanding that LILCO will be using emergency  
14 vehicles during this route alerting?

15 A (The witnesses are conferring.)

16 (Witness Kowieski) Again, it's a matter of  
17 terminology. LILCO will utilize own vehicles, and obviously  
18 in an emergency a regular vehicle, modified, will become an  
19 emergency vehicle.

20 Q Are you aware of the fact, Mr. Kowieski, that  
21 LILCO intends to use personal cars of route alert drivers  
22 to conduct this notification to the public?

23 A We are not aware of it, but I don't see any  
24 problem with it.

25 Q So, under your definition a personal vehicle car



#12-7-SueT 1

with a loudspeaker on top would become an emergency vehicle?

2

A (Witness McIntire) Yes. If it were carrying out an emergency function, yes.

3

4

Q On Page 49, gentlemen, you are talking about the possibility that route alert drivers may be requested to continue their routes if their dosimeter readings are, as you say, within acceptable limits for emergency workers.

5

6

7

8

Do you see that?

9

A (Witness Kowieski) Yes, we do.

10

11

12

13

Q Would you acknowledge that it is possible that under the LILCO plan routes would have to be abandoned by route alert drivers because dosimetry readings may exceed acceptable limits?

14

15

16

A (Witness Keller) Well, anything is possible. So, I would have to say, as you have phrased the question, yes. But I would like to explain or elaborate at least.

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22

One of the criticisms in the RAC report was that the LILCO plan did not give sufficient credence to plant status. And it is this plant status determination and dependency which allows for an earlier warning to the public and, therefore, the likelihood of this possibility would be further reduced.

23

24

25

Q Mr. Keller, are you aware of a procedure in the LILCO plan which states that route alert drivers, as well as other emergency personnel, may have to abandon their

#12-8-SueT 1

emergency post if their dosimetry readings exceed acceptable  
limits?

2

3

A My recollection is that they are to call in at  
200 MR and again at three and a half R, and my recollection  
is that they are told that they may have to stay on beyond  
the three and a half R if their function is an important  
one.

4

5

6

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8

That's a conscious decision that has to be made;  
there is nothing automatic about that. I don't recall --  
and it may be there, but I don't recall a section that says  
they have to abandon their post.

9

10

11

12

My recollection is that it has to be a conscious  
decision to allow them to continue their emergency function  
if they exceed the three and a half R.

13

14

15

(Witness Kowieski) That's also my recollection  
of the plan.

16

17

Q So it's your understanding, gentlemen, that  
there would not be a situation under the LILCO plan where  
routes may have to be abandoned because route alert drivers  
have received doses that exceed acceptable limits?

18

19

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21

A (Witness Keller) Would you define acceptable  
limits?

22

23

Q Limits that exceed 200 MR.

24

A 200 MR? The plan specifically specifies that they  
could stay on beyond 200 MR.

25

#12-9-SueT 1

2 Q And at any level above that, could routes be  
abandoned by the route alert drivers?

3 A As I stated, it is my recollection that there  
4 is no place in the plan which states that the drivers  
5 could automatically abandon their route. My recollection  
6 is that they are to call into their supervisor at 200 MR  
7 and then begin to read their 5 R dosimeter and to call in  
8 again at three and a half R, at which point if that dose  
9 is incurred a conscious decision will be made on the  
10 importance of the particular emergency function, route  
11 alert, or whatever, by the LERO management. And the  
12 individual may be authorized to incur additional exposure.

13 Now, you say, could it be. And the answer is,  
14 yes, it could be. But the plan is reasonably specific.  
15 And I don't have a recollection of it saying they have  
16 to abandon.

17 Q Do you have a recollection, Mr. Keller, as to  
18 what happens under the LILCO plan if a route is indeed  
19 abandoned by a route alert driver?

20 A My recollection is that another driver would  
21 be assigned.

22 Q Gentlemen, is it fair to say that at this time  
23 no one on the panel knows the average size of a LILCO  
24 siren territory?

25 A (Witness Kowieski) What do you mean? Would

#12-10-SueT 1

you please define when you say a siren territory?

2 Q Well, you are aware of the fact that there are  
3 sirens that are used --

4 A That's correct.

5 Q And there are territories around each siren  
6 that would have to be driven by route alert drivers if  
7 the siren would fail.

8 Are you aware of that?

9 A I'm aware of that.

10 Q Do you know the size of the territory around  
11 the sirens?

12 A No, I'm not. I know that sixty vehicles are  
13 allocated if necessary to become the -- to alert the  
14 public.

15 Q Have you seen any of the route alert driver  
16 maps of siren territories which have been composed by  
17 LILCO?

18 A No. I haven't seen any maps.

19 Q It would be fair to say, wouldn't it, Mr.  
20 Kowieski, that at this time you have no idea of how long  
21 then it would take to actually drive a siren territory?

22 A Again, I would expect that the backup system  
23 would meet the requirements of NUREG 0654. And let me  
24 again restate what I said before, that actual test of  
25 alert and notification system, the formal test, would be

#12-11-SueT1

conducted at a later date.

2 Q Yes, sir. My question is that at this time,  
3 you do not know how long it would take to drive an average  
4 siren territory; isn't that correct?

5 A (Witness McIntire) The point that we are trying  
6 to make is that --

7 Q Mr. McIntire, I understand the point. I under-  
8 stand the point about exercises being conducted later on  
9 and tests, and I'm sorry to interrupt but my time is  
10 short.

11 My question is pretty simple. Do you know at  
12 this time, do you have any idea whatsoever of the time  
13 that would be required to drive the average siren terri-  
14 tory?

15 A (Witness Baldwin) Our written testimony states  
16 on Page 48 an estimate of the time required to implement  
17 and execute the route alerting backup alternative to the  
18 siren alerting system could not be located in the plan.

19 Therefore, we don't know what it is at this  
20 time.

21 Q Mr. Keller, would you look please at OPIP 3.3.4,  
22 Attachment 1, Page 2? And it states on that page, Mr.  
23 Keller --

24 A (Witness McIntire) Could you give us a moment?  
25 MR. GLASS: Could you give them an opportunity

#12-12-SueT 1

to locate the document?

2 WITNESS KELLER: Which page?

3 BY MR. MILLER: (Continuing)

4 Q It's OPIP 3.3.4, Attachment 1, Page 2 of 2.

5 It's Page 6-A of 7.

6 It says there, doesn't it, talking about route  
7 alert drivers: If directed to leave the area or at a  
8 reading of 5R, whichever occurs first, return to the LILCO  
9 EOC emergency worker decontamination center at Brentwood  
10 for monitoring and possible decontamination.

11 A (Witness Keller) That's what it says at this  
12 location. I would like to cite for you another citation.

13 Q Mr. Keller, let me ask you a question first.  
14 Would you agree with me that under this procedure, routes  
15 may have to be abandoned by route alert drivers?

16 A Yes.

17 Q Is your answer yes?

18 A I would like to point out the initial portion  
19 of that. At a reading of three and a half R, inform the  
20 lead traffic guide of the dosimeter reading and prepare  
21 to leave the area. If directed to leave the area -- and  
22 that's where you started. Okay.

23 Q Yes, sir.

24 A In a --

25 Q Excuse me, Mr. Keller. Before we leave this

#12-13-SueT1

2 one, it says: If directed to leave the area or at a read-  
3 ing of 5R whichever occurs first.

4 Now, under this procedure isn't it a fact that  
5 route alert drivers may have to abandon their routes?

6 A That is correct. However, in a discussion of  
7 the similar situation on Page 3.9.2 of the plan, the first  
8 section. And I will let you get it.

9 (Witness Baldwin) My concern with your question  
10 is the term "abandon."

11 Q Well, it says they have to leave the area.

12 A But that doesn't necessarily mean that a route  
13 alert would be abandoned so that that population wouldn't  
14 be notified. They would be replaced by another route alert  
15 driver who has not reached the contamination cutoff point.

16 Q Is that an assumption on your part, Mr. Baldwin?

17 A It is based on my experience of observing other  
18 exercises where we have simulated similar type of things,  
19 yes.

20 Q At any exercises of the LILCO plan? You have  
21 made an assumption regarding this plan, correct?

22 A (Witness Keller) I -- no. Incorrect.

23 Q Excuse me. Mr. Baldwin, have you made an  
24 assumption regarding the fact that there --

25 A (Witness Baldwin) Answering that question, yes,  
I have.

#12-14-SueT 1

Q Now, Mr. Keller.

2

A (Witness Keller) I would like to read from the

3

plan which goes directly to the point that Mr. Baldwin was

4

discussing on Page 3.9.2 at Line 20 and 21, 22 actually:

5

At a reading of 3.5R per hour workers will inform their

6

immediate supervisor of the dosimeter reading -- which is

7

exactly the way it started in the procedure that you

8

quoted -- requesting further instructions and prepare to be

9

relieved.

10

And this is exactly the point that Mr. Baldwin

11

was making, that they would not abandon, that they would be

12

relieved. Okay.

13

It then goes on: When directed by their

14

supervisor or at a reading of 5R per hour, the same thing

15

that you had alluded to in the procedure in OPIP 3.3.4.

end #12 16

Okay.

Reb flws 17

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1 Q Mr. Keller, is it fair to say that the  
2 words, the really only different words between the plan  
3 site you are referring to and the procedure I referred to  
4 are the words "whichever comes first"?

5 MR. GLASS: It is obvious what the differences  
6 are.

7 WITNESS KELLER: The major difference is the  
8 omission in the procedure of "to be relieved." And a  
9 second difference is "whichever occurs first."

10 BY MR. MILLER:

11 Q Do you consider, Mr. Keller, there to be  
12 a conflict then between the implementing procedure 3.3.4  
13 and the LILCL plan?

14 A I can see where there could be a conflict, yes.

15 A (Witness Baldwin) I concur with that.

16 A (Witness Keller) I think that in order to --  
17 maybe you are aware of this. But the emergency worker  
18 exposure limit, which the EPA has established for  
19 non-lifesaving emergency functions, is well above the  
20 five R that is used in this portion of the plan.

21 In another section of the plan, which I would  
22 have to find the reference for, LILCO has adopted this  
23 emergency worker protective action guide.

24 The directors, decision makers at the EOC could,  
25 and still be within the plan, authorize exposures in excess

1 of the five rem all the way up to 25 rem and still not  
2 be in violation of the concept of the plan.

3 I recognize, for operating procedures, there  
4 may be conflicts in this. As you pointed out, there is  
5 a procedure, you do automatic things. Okay?

6 But there are also instructions to call in to  
7 your supervisor and receive instructions by whatever  
8 communication means you are calling in.

9 So in that regard it is not a conflict.

10 Q I guess, Mr. Keller, it would depend upon  
11 whether one was referring to the procedure or to the  
12 plan, correct?

13 A That is correct.

14 Q Is it fair to say, gentlemen, that under the  
15 LILCO plan, route alert drivers are instructed to drive  
16 at five miles per hour in driving their routes?

17 A (Witness Kowieski) That is my understanding of  
18 the plan.

19 Q Would you look, please, at contention 57  
20 which begins on page 50 of the FEMA testimony.  
21 It states, in the middle of the blocked portion, middle  
22 of the page, that each special facility will be equipped  
23 with a tone activated radio receiver.

24 Do you see that?

25 A Yes, I do.

1 Q Mr. Kowieski, have you verified at this time  
2 whether each such facility has, in fact, received such a  
3 tone alert radio?

4 A I have not.

5 Q And it talks later on in that same blocked  
6 portion about the signal from WALK Radio 97.5 FM  
7 which will automatically broadcast emergency messages.

8 Do you see that?

9 A Yes, I do.

10 Q Do you know, Mr. Kowieski, whether LILCO's  
11 tone alert radios would activate if the EBS signal  
12 activated from some station other than WALK radio?

13 A I don't know.

14 A (Witness Keller) It is my understanding  
15 that these tone alert radios are tuned to the WALK frequency.  
16 It is my understanding. And if there were another  
17 station on the WALK frequency, which doesn't seem to be  
18 reasonable, but if they were, then it could pick up  
19 from that station.

20 Q Mr. Keller, under your understanding, if WALK  
21 radio wasn't able to broadcast for any reason, the tone  
22 alert radios would not activate; is that correct?

23 A Unless there were another station on the same  
24 frequency.

25 Q And that would be unlikely?

1 A (Witness Kowieski) We don't know.

2 Q When you state in the last sentence on page 50  
3 that it should be noted that the plan provides for  
4 notification and early dismissal of schools at the  
5 alert level, do you see that statement?

6 A Yes, I do.

7 Q It is true, isn't it, that the public would also  
8 be notified at the same time?

9 A Is not true.

10 Q It is not true? Is that what you said?

11 A Yes, sir. Well, not necessarily. There is  
12 a provision in the plan which stipulates that EBS system  
13 can be activated without prior to the siren activation  
14 at alert level.

15 Q It is possible that schools at the alert stage  
16 would receive notification at the same time as the rest  
17 of the general public, correct?

18 A That is possible.

19 Q Look at contention 58, gentlemen, on pages 52  
20 and 53.

21 The first sentence in your answer states  
22 that, "The plan satisfied the criteria for NUREG 0654 which  
23 requires 24-hour per day backup means of communication  
24 with emergency response organizations including special  
25 facilities."

1 Do you see that statement?

2 A Yes, we do.

3 Q Mr. Kowieski, I take it that you are not  
4 saying that LILCO's backup means of communications --  
5 that is, commercial telephones -- are adequate and will  
6 provide assurance that notification and verification to  
7 special facilities will take place; is that correct?

8 MR. GLASS: I am a little confused by the  
9 question. You are using the term "adequate" and  
10 "provide assurance." There is a difference between,  
11 you are talking about adequate against NUREG standards  
12 and you are -- we have gotten into this issue before.

13 BY MR. MILLER:

14 Q Mr. Kowieski, are you confused by my question?

15 A Yes, sir.

16 Q Let me ask you again, looking at that first  
17 sentence to the answer on page 52, is it fair to say  
18 that you are not saying that LILCO's backup means of  
19 communications, using commercial telephones, will provide  
20 assurance that notification and verification to special  
21 facilities will take place?

22 A What I am saying in this comment is that  
23 provisions identified in the LILCO transition plan  
24 satisfy the NUREG 0654 planning criteria.

25 Q So you are not making the statement regarding

1 whether or not such provisions actually would work, correct?

2 A That is correct. Again, it is a matter of  
3 exercise or test.

4 Q You mention in your answer, Mr. Kowieski,  
5 that a directory of mobility-impaired persons is being  
6 compiled based on the completed survey cards.

7 Do you see that?

8 It is towards the end of the answer on page 52.  
9 It is also mentioned at the end --

10 A Yes, I do.

11 Q Have you seen this directory at this time,  
12 Mr. Kowieski?

13 A I have not.

14 Q Will FEMA or the RAC review such directory  
15 if it is indeed compiled by LILCO?

16 A Prior to or during the exercise.

17 Q On page 53 of the testimony, where you say that  
18 the RAC has considered these provisions for protecting  
19 mobility-impaired persons to be adequate, provided that  
20 there is such a directory, do you see that statement?

21 A On page 53?

22 Q Yes, sir.

23 A Yes, I do.

24 Q I take it, Mr. Kowieski, that you are not  
25 saying in this testimony that mobility-impaired persons will

1 in fact be protected -- that is, will be notified of an  
2 emergency -- is that correct?

3 A I am saying the provision -- what I am saying,  
4 what we are saying in this testimony, the provisions  
5 for protecting -- and I would underscore provisions for  
6 protecting mobility-impaired persons are adequate.

7 Q So at this time, Mr. Kowieski, you are not  
8 saying that mobility impaired persons will, in fact,  
9 be protected by these provision; isn't that correct?

10 A The conclusion would have to be drawn after  
11 the exercise.

12 MR. GLASS: Judge Laurenson, I understand that  
13 it is the county's time to spend as they wish, but this  
14 issue of the review that is conducted on a plan and the  
15 activities that take place at an exercise have been  
16 discussed in great detail. And we just seem to keep  
17 coming back to them.

18 BY MR. MILLER:

19 Q Mr. Kowieski, is it fair to say that at this  
20 time neither FEMA nor the RAC know how many special  
21 facilities are located in and near the Shoreham EPZ?

22 A We know that.

23 Q You do know that?

24 A Yes, sir. As a matter of fact, if you will allow  
25 me 15 seconds, I will be glad to --

1 Q I will permit you 15 seconds.

2 (Pause.)

3 A Handicapped facilities, five organizations at  
4 16 locations; hospitals, number of hospitals three;  
5 nursing adult homes, eight; nursing schools, 13.

6 Q What are you referring to, Mr. Kowieski?

7 A I am referring to my private notes, that  
8 compilation of data from the plan.

9 Q Are you aware of the locations of these  
10 facilities?

11 A I would have to go again to the plan to  
12 verify if a location of every facility is identified. I  
13 am not certain.

14 A (Witness Baldwin) Yes, we can look that up  
15 also. It is located in the OPIP that deals with special  
16 evacuations, and there is a table in there that  
17 contains the list from which this was drawn. And my  
18 recollection of that table is that the addresses are in  
19 there.

20 A (Witness Kowieski) If you wish, I have a  
21 reference up here, OPIP 3.6.5 through 4.2.2 which identifies  
22 all these facilities.

23 Q That's fine, Mr. Kowieski. Let me ask you  
24 another question.

25 Are you aware at this time of the number of



1 handicapped individuals who reside within the EPZ?

2 A No. As we stated in our testimony, the list  
3 is -- I understand that the list is being compiled.

4 Q Would you agree with me, Mr. Kowieski, that  
5 contention 58 refers to both notification to special  
6 facilities and also LILCO's provisions for attempting  
7 to verify that notification has been received and also  
8 attempting to determine whether there are specific needs  
9 for assistance from LILCO?

10 A That is my recollection, yes.

11 Q In stating that the RAC has considered LILCO's  
12 provisions for protecting mobility-impaired persons  
13 to be adequate, did you take into consideration provisions  
14 for notifying and attempting to verify and attempting  
15 to determine specific and special needs of special facilities?

16 A Yes, we took into consideration all these  
17 aspects, sure.

18 Q Is it fair to say that it is your understanding  
19 that LILCO relies upon commercial telephone to make such  
20 notification/verification to special facilities?

21 A Again, as we say in our testimony, each  
22 special facility is supposed to be equipped in tone  
23 alert radio and also commercial telephones will be used to  
24 verify the notification and to determine their needs in  
25 case of emergency.

1 Q And do you know the number of LILCO personnel  
2 who are expected, under the LILCO plan, to make such  
3 notification and verification to these special facilities?  
4

5 A (Witness Baldwin) No, we don't.

6 A (Witness Keller) I would like to add something  
7 to Mr. Kowieski's statement. As pointed out on page 53,  
8 not all handicapped individuals are going to depend on  
9 tone alert radios. There is a specific, basically  
10 personal contact with the hearing impaired.

11 A (Witness Kowieski) Well, when I referred to  
12 tone alert radios, I referred to special facilities;  
13 noninstitutionalized individual would be, again, notified  
14 in different fashion.

15 Q Under the LILCO plan, Mr. Keller, LILCO would  
16 rely upon the route alert drivers to notify hearing-  
17 impaired persons at their homes; is that correct?

18 A (Witness Keller) It is not my --

19 A (Witness Baldwin) My recollection is a little  
20 different, that LERO notification personnel will be  
21 dispatched directly to the -- yes, in fact, we have a  
22 citation in our written testimony which I would be happy  
23 to read, but it is already there.

24 A (Witness Keller) I don't recall.

25 A (Witness Baldwin) They are dispatched directly  
to the deaf, is my recollection.

1 Q Mr. Baldwin, why don't you just give me the  
2 cite to your testimony?

3 A On page 53 in the single-spaced section.

4 Q Are you referring where it says, "In the case  
5 of the deaf population or home, a LERO representative  
6 will be dispatched to their home"?

7 A Yes.

8 Q And it is your understanding that this  
9 LERO representative or representatives would not be  
10 route alert drivers; is that correct?

11 A That is correct.

12 A (Witness Kowieski) Let me just add that my  
13 recollection of the plan is that route alert driver will  
14 be responsible for notification of deaf individuals.

15 Q Would you look at page 54 of the testimony --  
16 actually, pages 54 and 55 -- which deals with contention 59,  
17 and that is the Coast Guard issue, correct?

18 A Yes, sir.

19 Q Now, the answer posed in question 62, Does the  
20 LILCO plan indicate whether the Coast Guard has the  
21 capability of notifying the general public on the  
22 waterways within the ten-mile EPZ within 15 minutes of  
23 the initial notification, I take it that the answer to  
24 that question is, no.

25 Is that correct?

1 A We don't know.

2 Q You don't know whether the LILCO plan indicates  
3 whether the Coast Guard has this capability?

4 A We don't know whether the Coast Guard has the  
5 capability to notify the general public on waterways within  
6 15 minutes.

7 Q My question is a little different. The question  
8 in your testimony is, Does the plan indicate whether  
9 the Coast Guard has this capability.

10 Is the answer to that question no?

11 A (Witness Keller) I think if you will read  
12 our testimony, it says, "The plan is not specific with  
13 regard to the Coast Guard's capability of notifying the  
14 general public within 15 minutes."

15 So we have testified that the plan doesn't  
16 say.

17 Q On page 55 of your testimony, gentlemen, you  
18 talk about Appendix 3 of NUREG 0654 which recognizes  
19 that there may be special circumstances.

20 A (Witness Baldwin) Yes, that is correct.

21 Q And it goes on to say, "Under which it may  
22 not be possible to assure that both an alert signal  
23 and an informational or instructional message can be  
24 provided to the population within 15 minutes."

25 Do you see that reference?

1 A Yes.

2 Q Now, is it your testimony that notification to  
3 the public on the Long Island Sound would constitute such  
4 a special circumstance?

5 A Yes, it is.

6 Q And, therefore, I take it, Mr. Baldwin, that  
7 you therefore believe the Coast Guard would have to have  
8 the capability of making notification within 45 minutes;  
9 is that correct?

10 A That's correct.

11 Q And it is your testimony that at this time  
12 you do not know if the Coast Guard has that capability,  
13 correct?

14 A That is correct.

15 Q And if it does not, if the Coast Guard does not  
16 have that capability, the LILCO plan would be inadequate  
17 in that regard, correct?

18 A That is correct, unless other provisions are  
19 made for the notification of the boating public on  
20 Long Island Sound.

21 Q And to your knowledge, there are no such  
22 other provisions in the LILCO plan, are there?

23  
24  
25  
END 13

1 A That is true.

2 Q Now, it states at the end of page 55 the basis  
3 for any special requirements exceptions; for example ,  
4 extended water areas, must be documented. Do you see  
5 that statement?

6 A (Witness Baldwin) Yes, I do.

7 Q To your knowledge, has LILCO documented the  
8 basis for any special requirements exception?

9 A (Witness Kowieski) No, but we would expect  
10 alert notification documentation would be provided prior  
11 to alert A&N certification test.

12 Q I think I understand your answer, Mr. Kowieski.  
13 The answer is, to your knowledge at this time LILCO has  
14 not documented this special requirements exception, correct?

15 A That is correct. But again, I want to make  
16 clear there is no specific requirement as far as NUREG  
17 0654 is concerned that this documentation be provided at  
18 this point in time.

19 A (Witness Baldwin) That means that we have to  
20 have verification that the design objectives for the  
21 notification which in these special cases, can be met.

22 Q Do you know, gentlemen, if at this time --  
23 let me ask this: Isn't it true that at this time the  
24 Coast Guard has not committed to conducting alert notifications  
25 on LILCO's behalf within 45 minutes?

1           A       (Witness Kowieski) We don't have any  
2 information that would support your suggestion, or contrary  
3 to it.

4                   We simply don't know. There is only a letter  
5 of agreement with the Coast Guard. The Coast Guard will  
6 assist LERO in the case of an emergency.

7           Q       And that letter of agreement that you have  
8 reviewed does not state that the Coast Guard will perform  
9 notification functions within 45 minutes, does it?

10           A       To the best of my recollection, the letter does  
11 not specify the time it will take them to notify the public  
12 on water ways .

13           Q       Is it fair to say, Mr. Kowieski, that at this  
14 time FEMA has no knowledge or information regarding the  
15 resources of the Coast Guard that would be used to notify  
16 the public on the waterways of the EPZ?

17           A       No, we don't. However, I want to respond that  
18 it is my understanding that the Coast Guard, as a Federal  
19 agency, has their own laws and regulations they have to  
20 abide by, and it is my understanding that one of these laws  
21 would say that they have to notify the public on the waterways .

22           Q       Within 45 minutes?

23           A       We don't know.

24           Q       It is your understanding that there is a law that  
25

1 requires the Coast Guard to notify the public on LILCO's  
2 behalf on the waterways of the Long Island Sound?

3 A What I was trying to say, the Coast Guard has  
4 their own rules and regulations. That they will respond  
5 not necessarily to LERO; any private organization. If  
6 a private organization would request for assistance if  
7 there is an emergency.

8 Q Gentlemen let's go on to your schools testimony,  
9 Contentions 68 through 71, which begins on page 68.

10 Is it fair to say, Mr. Kowieski, that the  
11 LILCO Plan assumes pre-planning by schools in and near the  
12 EPZ?

13 A (Witness McIntire) Could you define more  
14 specifically pre-planning, please?

15 Q Pre-planning by the schools for an emergency  
16 at the Shoreham plant?

17 A To any degree?

18 Q Well, I am not going to define the quantum  
19 of pre-planning. Any pre-planing. Is it fair to say that  
20 the LILCO Plan assumes that there will be pre-planning by  
21 the schools for an emergency at the Shoreham plant?

22 A (Witness Kowieski) Yes, we do.

23 Q I am asking you is it fair to say that the LILCO  
24 Plan assumes such pre-planning. Is your answer yes?

25 A Yes.



1 Q Now, are you aware of any such pre-planning by  
2 any school in or near the EPZ?

3 A (Witness McIntire) I would consider in the  
4 definition of planning that we discussed the acceptance  
5 of the tone alert radio would be a degree of planning.

6 Q With the exception of the acceptance of a tone  
7 alert radio, Mr. McIntire, are you or anyone else on the  
8 panel aware of any pre-planning by any school in or near  
9 the EPZ?

10 MS. McCLESKEY: I object to the question. I  
11 believe it was asked two days ago. I recollect almost the  
12 precise answer given by Mr. McIntire then that he just gave  
13 regarding tone alert, and I think Mr. Miller followed up with  
14 the same question.

15 MR. MILLER: Well, I don't have your recollection  
16 at all, Ms. McCleskey.

17 JUDGE LAURENSEN: Objection is sustained.

18 MR. MILLER: Judge Laurenson, this question has  
19 not been asked before.

20 JUDGE LAURENSEN: I believe it has.

21 MR. GLASS: I believe it has also.

22 MR. MILLER: Well, can someone point me to the  
23 transcript cite?

24 JUDGE LAURENSEN: Move on, Mr. Miller.

25 BY MR. MILLER: (Continuing)

1           Q       Mr. McIntire, if there were no pre-planning by  
2 the schools for an emergency at the Shoreham plant, would  
3 that change your testimony in any regard?

4           A       We did -- I don't understand the question now.  
5 I am thoroughly confused.

6           Q       Let me back up, Mr. McIntire. Why don't you  
7 look at page 69 of your testimony, and it says after the  
8 blocked indented material, we consider that the Plan contains  
9 adequate provisions for protecting school children.

10                   It goes on from there and talks about the plant  
11 condition matter.

12                   My question to you is: That assuming there were  
13 no pre-planning by schools for an emergency at Shoreham,  
14 would your testimony remain the same? That is, would you  
15 still believe that the LILCO Plan contains adequate provisions  
16 for the protection of school children?

17           A       (Witness Keller )   The Plan would contain  
18 adequate provisions. I think what you are getting to is the  
19 implementation aspect of this again.

20                   The Plan would still contain what it contains.  
21 The people may not be able to implement the Plan, if your  
22 hypothetical were in effect, and that would change an  
23 evaluation, perhaps, after an exercise, but it wouldn't  
24 necessarily change the evaluation of the Plan.

25           Q       Mr. Kowieski, would it be fair to say that the

1 LILCO Plan assumes that schools in and near the EPZ will be  
2 able to implement the recommendations that are set forth for  
3 schools in the LILCO Plan?

4 A (Witness Kowieski) That is correct.

5 Q Now, are you in agreement with this assumption  
6 by the LILCO Plan?

7 A I don't understand your question. If I am  
8 in agreement --

9 A (Witness McIntire) We have testified that we  
10 have, and then you get back to the question of implement-  
11 ability again.

12 Q Mr. McIntire, are you saying that you, also,  
13 assume that the schools will be able to and will implement  
14 the recommendations set forth in the LILCO Plan?

15 A (Witness Keller) You have added something,  
16 and I would like to answer the first one first. The first  
17 time you asked, do we assume that they could.

18 And the second time you said, 'and will,' and I  
19 cannot testify as to what they will do. But based on the  
20 three options which are available, that is early dismissal,  
21 sheitering the students in place, or putting the students  
22 on the buses to take them to relocation center, there is  
23 nothing particularly esoteric or difficult about either of  
24 these three options, and our assumption is that they would  
25 be capable of doing these things.

1                   We have no way of knowing whether they would  
2 or whether they wouldn't.

3                   Q       But, Mr. Keller, in the RAC review process and  
4 in your testimony to this Board, it is true, isn't it, that  
5 you have assumed that the schools would implement the  
6 recommendations set forth in the LILCO Plan?

7                   A       (Witness McIntire) What we have assumed is  
8 that schools, when they have the children in their care,  
9 whatever the type of emergency there would be, be it  
10 radiological, some type of natural disaster, that the school  
11 will take protective actions to ensure the safety of the  
12 children.

13                   A       (Witness Kowieski) Let me add that when you  
14 say assume schools will implement protective actions, this  
15 applies to every single element of the Plan.

16                   Whatever is in the Plan, we assume it is there.  
17 If it is not there, the Plan cannot be implemented.

18                   Q       Mr. McIntire, your last statement, are you  
19 assuming that the only way for school officials to protect  
20 their school children would be by following the recommendations  
21 of the LILCO Plan?

22                   A       (Witness McIntire) We are saying that the  
23 Plan provides three basic overall objections. Within these  
24 sets there are specific actions. There may be, because of  
25 very unique circumstances, another type of protective action.

1 Q So, isn't it a fact, Mr. McIntire, that schools  
2 could protect their children and yet not follow the  
3 recommendations of the LILCO Plan?

4 A Certainly. That goes to the heart of emergency  
5 management, right there. You cannot pre-plan every type of  
6 contingency. That is why emergency managers make decisions  
7 based on specific circumstances and conditions to provide  
8 safety.

9 Q Mr. McIntire, earlier when you talked about  
10 the acceptance by schools of tone alerts, is it your  
11 testimony that the acceptance of a tone alert alone constitutes  
12 an acceptable level of planning?

13 MR. GLASS: I object, Your Honor. This is the  
14 third time we are coming back to this question.

15 MR. MILLER: It is a completely different question.

16 MR. GLASS: How is it different?

17 JUDGE LAURENSEN: Objection is overruled.

18 WITNESS McINTIRE : I did not say acceptable  
19 level, and the definition that we agreed on, I believe, on  
20 Planning, I said this constitutes a degree of planning.

21 I certainly did not say an acceptable degree.

22 BY MR. MILLER: (Continuing)

23 Q And it would not be an acceptable level of  
24 planning, in your opinion, would it Mr. McIntire?

25 A (Witness McIntire) I have no opinion on that

1 at this moment.

2 Q Would you agree with me, Mr. Kowieski, that  
3 the LILCO Plan could not be implemented without school  
4 officials performing certain activities.

5 For example, deciding to accept the protective  
6 action recommendations made by LILCO?

7 MS. McCLESKEY: Objection.

8 MR. MILLER: I am not finished with my question.  
9 Excuse me.

10 BY MR. MILLER: (Continuing)

11 Q For example, deciding to accept and follow  
12 LILCO's protective action recommendations for school  
13 children.

14 MS. McCLESKEY: Objection. The question was  
15 asked and answered two days ago.

16 MR. MILLER: It was not asked and answered . It  
17 was never asked.

18 JUDGE LAURENSEN: Well, you have been through  
19 this area before concerning the same subject matter. I  
20 frankly can't recall specifically this question being asked,  
21 so the objection is overruled.

22 MR. McINTIRE: Could you please ask the entire  
23 question again?

24 MR. MILLER: Yes, sir.

25 BY MR. MILLER: (Continuing)

1 Q Would you agree with me that the LILCO Plan  
2 could not be implemented without school officials deciding  
3 to accept the protective action recommendations made by  
4 LILCO?

5 A (Witness Keller) Clarification. We are not  
6 trying to be hard, but you are saying the LILCO Plan, or the  
7 portion of the Plan involving the schools.

8 Q Well, the portion of the plan involving the  
9 schools.

10 A (Witness McIntire) You are saying could the  
11 Plan, if I understand you, not be implemented, or it could  
12 only be implemented if they followed the protective action  
13 recommendations put out by LILCO?

14 Q I am talking about the provisions of the LILCO  
15 Plan. Let me try a different question. I think there is  
16 confusion.

17 A There is on my part.

18 Q If there were no school officials in the schools,  
19 could any protective action recommendations under the LILCO  
20 Plan be implemented?

21 A Are we making the assumption now that there are  
22 children in the schools without school officials?

23 Q Yes, sir.

24 MS. McCLESKEY: I object to that question. I  
25 think it is ridiculous even if it is a hypothetical.

1 JUDGE LAURENSEN: I think we are just wasting  
2 time now. Let's get on to questions that have some relevance  
3 to what we are here to decide, and that was schools with  
4 children, but no officials.

5 Objection is sustained.

6 BY MR. MILLER: (Continuing)

7 Q Mr. McIntire, what I am trying to get at, and  
8 I am having some trouble doing in light of the disruptions,  
9 is to ask you is it fair to say that the LILCO Plan requires  
10 participation by school officials to carry out the protective  
11 actions which would be recommended under the LILCO Plan for  
12 school children?

13 MS. McCLESKEY: I object. We discussed the whole  
14 nature of whether letters of agreement were required from  
15 schools, and whether they were defined as support organiza-  
16 tions, and I think this question is repetitive of that.

17 JUDGE LAURENSEN: Sustained.

18 MR. MILLER: Judge Laurenson, we are obviously  
19 in an area that LILCO does not want to hear any questions  
20 to these witnesses, or answers by these witnesses. These  
21 questions have not been asked of these witnesses. I have  
22 been trying for three minutes now to ask a simple question,  
23 and I am not being allowed to ask the question.

24 JUDGE LAURENSEN: I think this is cumulative  
25 of the evidence that you elicited from the same witnesses



1 when you started on Tuesday.

2 MR. MILLER: I disagree, and I don't think this  
3 area has been covered, and I think it is incumbent upon the  
4 objecting parties, such as LILCO when they are trying to be  
5 disruptive, to show cites to the transcript, since they have  
6 had them for a couple of days now, to where this question has  
7 been asked and answered.

8 MS. McCLESKEY: Judge Laurenson, to save time,  
9 I will withdraw my objection and Mr. Miller can go ahead  
10 and repeat everything, and I also would like to state for  
11 the record that LILCO is exceedingly happy with all of the  
12 testimony that has been elicited regarding schools.

13 JUDGE LAURENSEN: Well, we have an independent  
14 duty to monitor and control these hearings, so I am not  
15 going to withdraw my ruling.

16 BY MR. MILLER: (Continuing)

17 Q Gentlemen, do you have a copy of the contentions?

18 A (Witness Kowieski) Yes, I do.

19 Q Would you look please at Contention 68.

20 Contention 68, gentlemen, says that the Plan fails to  
21 specify the bases upon which LILCO would continue to make  
22 a protective action recommendation of early dismissal as  
23 opposed to sheltering or evacuation, to schools if they had  
24 initiated an early dismissal, even if other protective actions  
25 were being recommended for the general public.

Do you see that?

1           A       (Witness Baldwin)    We were slow in turning  
2 to the right place.

3           Q       My question is, do you agree with Contention  
4 68, as I just read to you?

End 14. 5  
Sue fols.

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#15-1-SueT 1

A (Witnesses conferring.)

2 (Witness Kowieski) I don't think we agree with  
3 the contention, but again if you allow us some time we  
4 would like to check in the procedure to be certain.

5 Q Well, let me ask you to look at the procedure  
6 cited in the contention, Procedure 3.8.2 at Page 5. Do  
7 you see in that procedure at the end where it states: If  
8 the schools have already initiated early dismissal do not  
9 recommend other protective actions?

10 Do you see that statement?

11 A (Witness Baldwin) Yes.

12 Q Now in light of that statement in the LILCO  
13 plan, do you agree with Contention 68?

14 MR. GLASS: Your Honor, I have an objection.  
15 I know we have gone into this area before, but the witnesses  
16 have prefiled their testimony. We have the contentions  
17 which are citing to one particular section of the plan.

18 The witnesses, to fully answer a number of these  
19 contentions, or a number of these issues, have had to go  
20 to other sections of the plan where same or similar infor-  
21 mation may be contained. And it does cause I think a  
22 problem to try to elicit direct testimony. And that's  
23 what we seem to be doing, not cross-examination here on  
24 what has been prefiled.

25 JUDGE LAURENSEN: It's a proper subject for

#15-2-SueT 1

2 inquiry, to ask these witnesses if they agree with the  
3 contention. And that basically is the question, although  
4 he has modified it or refined it by directing them to  
5 particular sections.

6 The objection is overruled.

7 MR. MILLER: Judge Laurenson, the section of  
8 the procedure I referred to is stated in the contention  
9 also.

10 (The witnesses are conferring.)

11 BY MR. MILLER: (Continuing)

12 Q Can someone give me an answer to my question?

13 A (Witness McIntire) Could you restate it now?  
14 Could you restate the question, please, now that we have  
15 had an opportunity to look at the contention and specific  
16 sections of the plan?

17 Q The question is, do you agree with Contention  
18 68, and I have referred to Procedure 3.8.2 with respect to  
19 that question.

20 A (Witness Baldwin) Let me quote you from  
21 Procedure 3.6.5.

22 Q Excuse me. Are you going to give me an answer  
23 to my question? I really don't want you to read into the  
24 record something from the plan, Mr. Baldwin, because I  
25 seem to get penalized for that.

MR. GLASS: Your Honor, this is the exact question

#15-3-SueT 1

2 that I raised a minute ago. Mr. Baldwin is trying to  
3 respond by referring to another section that he feels bears  
4 to this issue.

5 And to limit the witness and pick one section  
6 that the County wants to utilize and say you have to respond  
7 on that and ignore everything else in the plan is what is  
8 causing the problem and causing my concern in this matter.

9 JUDGE LAURENSEN: Well, the County is entitled  
10 to cross-examine these witnesses by asking them if they  
11 agree with the contention.

12 Now, they can either answer the question yes,  
13 or they can say no, or they can say it can't be answered  
14 yes or no. But those are the choices. And I think that  
15 the question should be treated in that fashion.

16 I'm assuming that Mr. Miller wants a yes or no  
17 answer; is that correct?

18 MR. MILLER: Yes, Judge Laurenson. I think  
19 in light of the time being spent, I will ask for a yes or  
20 no.

21 JUDGE LAURENSEN: Now, do you understand? The  
22 question is whether you agree with Contention 68, yes or  
23 no.

24 (The witnesses are conferring.)

25 WITNESS MC INTIRE: We do not think a yes or no  
answer would suffice. We certainly do not agree totally

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with it.

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BY MR. MILLER: (Continuing)

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Q Would you agree with me, Mr. McIntire, that under the procedure that I cited to you that schools, once notified to enact early dismissal, may not be notified under the LILCO plan of subsequent protective action recommendations that may be different?

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A I don't see anything to support an answer of yes to that question.

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Q Are there any parts of Contention 68, Mr. McIntire, you do agree with?

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A (The witnesses are conferring.)

(Witness Baldwin) Well, the plan does specify the bases upon which LILCO would make protective action recommendation for early dismissal.

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Q Yes, sir. That's not the contention. The contention talks about the fact that LILCO fails to specify the bases upon which LILCO would continue to make a protective action recommendation of early dismissal to schools if they had initiated an early dismissal even if other protective actions were being recommended for the general public?

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A (Witness McIntire) That's what, I think, we are having trouble coming to grips with. If they have initiated early dismissal, we would assume that they would

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continue early dismissal.

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Q Even if, following the initiation of early dismissal, the general public would be told to evacuate, you would assume that the schools would keep sending their children home on early dismissal; is that correct?

Is that what you are saying?

A We are getting into the area of speculation again.

Q Mr. McIntire, I'm trying to understand what you are telling me.

A (Witness Baldwin) Once they have taken the action of early dismissal and the children are loaded on the buses and they have left the school grounds, we assume -- I assume -- that that would continue until they got home and were put in the care of either their parents or whoever is at the house when they arrive.

Q Mr. Baldwin, what happens, Mr. Baldwin, in the situation where there are multiple bus runs required for early dismissal and perhaps some of the school children have not yet left the school grounds?

Under that situation, does the plan provide for informing the schools of a change in a protective action recommendation for the general public?

A My understanding of the plan in that situation would be that those buses would be sent directly to the

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relocation center.

2 Q And that's notwithstanding the provisions of  
3 Procedure 3.8.2, which I referred you to, where it says  
4 that the schools would not be informed of subsequent pro-  
5 tective action recommendations?

6 A (Witness Keller) It doesn't say that.

7 Q What does it say, Mr. Keller?

8 A If the schools have already initiated early  
9 dismissal, do not recommend other protective action. It  
10 does not say that they would not be informed of other  
11 protective action recommendations.

12 Q It says do not recommend to the schools.

13 A No. Do not recommend other protective actions.  
14 It doesn't say they would not be informed.

15 (Witness McIntire) We are getting into a case  
16 here, in my judgment, where we are talking more of a normal  
17 sequence and you are talking one of the worst possible  
18 cases.

19 Q Isn't that what emergency planning is all about,  
20 Mr. McIntire, planning for the worst case?

21 A No.

22 Q You plan for the best case?

23 A No.

24 Q What case do you plan for?

25 A You plan for a range of cases, but you also --



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2 the flexibility -- what emergency management is about is  
3 more than planning. It's the preparedness, and it's the  
4 ability in changed conditions, particularly if worse  
5 case situations develop where emergency managers through  
6 their training and expertise take the actions that are  
7 available to them to protect the public.

8 MR. MILLER: Judge Laurenson, maybe this would  
9 be a good time for a break.

10 JUDGE LAURENSEN: All right. We will take a  
11 ten minute recess.

12 (Whereupon, the hearing is recessed at 3:30 p.m.,  
13 to reconvene at 3:40 p.m., this same day.)

14 JUDGE LAURENSEN: Mr. Miller.

15 BY MR. MILLER: (Continuing)

16 Q Mr. Kowieski, is it your testimony that the  
17 early dismissal plans for schools that are relied upon by  
18 LILCO are intended by the schools for use during a radio-  
19 logical emergency at Shoreham?

20 A (Witness Kowieski) I only assume the informa-  
21 tion that is presented in the plan are correct.

22 Q Is it fair to say then that you do not know  
23 whether early dismissal plans by the schools are intended  
24 for use during a radiological emergency at Shoreham?

25 A Again, when we go to the exercise, when we test,  
not all the schools but some of the schools, we will sample,

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2 we will be able to determine whether or not the schools  
3 are agree and able to implement the protective actions  
4 that are specified in the LILCO plan.

5 (Witness McIntire) But if the question is, is  
6 early dismissal in the plan --

7 Q No, sir, that's not my question. My question  
8 is, do you believe that the early dismissal plans of the  
9 various schools relied upon by LILCO are intended by the  
10 schools for use during a radiological emergency at Shoreham?

11 A (Witness Kowieski) We don't know.

12 (Witnesses conferring.)

13 As was just pointed out by one of the witnesses,  
14 that early dismissal plans are not only used for this  
15 particular site, are also being used for other sites as  
16 well.

17 (Witness Keller) And for other emergencies  
18 other than radiological emergencies. The early dismissal  
19 plan is not restricted to use for radiological emergency.

20 Q Well, in fact, Mr. Keller, you don't know if  
21 they are intended for use at all during a radiological  
22 emergency; isn't that correct?

23 A All we know is what the plan says, as Mr.  
24 Kowieski pointed out.

25 (Witness McIntire) It's our understanding that  
schools in New York State have early dismissal plans for all

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2 types of contingencies. And it's a generic plan as opposed  
3 to an emergency specific type.

4 Q Well, I take it that you would at least agree  
5 with me, Mr. McIntire, that FEMA has not asked or discussed  
6 this matter with any of the school officials?

7 A I would agree with you.

8 Q Looking at Page 70 of your testimony on  
9 Contention 69, and looking at Contention 69.B, which is  
10 the contention addressed in the first answer on Page 70,  
11 would you agree with the statement made in Contention 69.B  
12 that the LILCO plan does not incorporate or provide any  
13 essential details of early dismissal plans for the schools  
14 or school districts in or near the EPZ?

15 Would you agree with that statement?

16 A (Witness Keller) I would agree that there are  
17 no details of the early dismissal plans.

18 Q And looking at your answer to Question 80  
19 regarding Contentions 69.C.1 and 2, you state that the  
20 plan does not specify the amount of time required for  
21 school children to arrive home if schools are dismissed  
22 early.

23 Do you see that statement?

24 A (Witness Kowieski) Yes, we do.

25 Q Do you have any reason at this time to disagree  
with Contention 61 -- I'm sorry, Contention 69.C.1 or C.2?

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1 A (Witness McIntire) Perhaps it would be helpful  
2 if you could read it again, please.

3 (Witness Keller) I think to clarify, we tried  
4 to paraphrase the contention and not necessarily use exactly  
5 the same words in our questions and answers for our testi-  
6 mony. And now you are going back to the contentions. We  
7 only have one copy with us, and we have to look them up.  
8 I'm sorry, but it takes some time.

9 Q Let me try to paraphrase what the contention  
10 states and you object and tell me if you think I am not  
11 paraphrasing correctly.

12 69.C.1 roughly states that even under non-  
13 emergency conditions it takes hours to implement early  
14 dismissals due to time required to make the necessary  
15 decision, to mobilize the necessary personnel and vehicles,  
16 to perform the necessary bus runs.

17 Would you agree with that statement?

18 A (Witnesses conferring.)

19 (Witness McIntire) We don't have any information.  
20 You said non-emergency conditions?

21 Q Even under non-emergency conditions.

22 A We have no information. The only information  
23 that we have are the evacuation time estimates in the  
24 plan.

25 Q And Contention 69.C.2 talks about -- well, it

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2 states early dismissal traffic, including those children  
3 expected to walk home, will encounter early evacuation and  
4 mobilization traffic.

5 Do you have any reason to disagree with that  
6 statement?

7 A (Witness Keller) Yes. I disagree with that  
8 statement.

9 Q And what is the basis for your disagreement?

10 A The fact that the schools will be notified at  
11 the alert level and that there will be no protective --  
12 that the schools will be notified by the tone alerts at  
13 the alert level and that recommended protective actions  
14 for the schools would be early dismissal at the alert level.

15 If there were an evacuation in progress, which  
16 would mean that you would be at the general emergency level,  
17 the schools would not be told to send their students home  
18 early.

19 Q Mr. Keller, the schools would be notified at an  
20 alert level by means of the tone alert radios at the schools,  
21 correct?

22 A That is correct.

23 Q Now, the tone alert radios are activated by the  
24 EBS message via WALK Radio; is that correct?

25 A But there is a separate signal so that the tone  
alerts can be activated and the sirens not activated.

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2 Q Yes, sir. But for activation to occur via  
3 WALK Radio or the tone alert radios, the EBS message would  
4 be broadcast over WALK Radio; is that correct?

5 A That's not my understanding necessarily. It  
6 could be, but that is not a necessary.

7 Q Do you understand that tone alert radios could  
8 be activated somehow other than by WALK Radio?

9 A (Witness Kowieski) That's not our understanding.  
10 We are saying that the message that would be broadcast,  
11 EBS message, not necessarily would have to go to general  
12 public. That's what we are saying.

13 Q Well, does the message go over the air over  
14 WALK Radio's frequency?

15 A That's correct.

16 Q So wouldn't the public, any member of the public,  
17 listening to that frequency hear the emergency broadcast  
18 message?

19 A (The witnesses are conferring.)

20 (Witness Keller) The message has to get to the  
21 schools over the WALK frequency, but the sirens which is  
22 the signal for hopefully all the public within the ten mile  
23 EPZ to tune to WALK does not have to sound along with this  
24 initial emergency broadcast message. Also, that message  
25 would also state that there is no necessity for the popula-  
tion to take protective actions.

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Q Would you agree with me, Mr. Keller, that any  
2 emergency message activating the tone alert radios over  
3 WALK Radio could also be heard by members of the general  
4 public?

5 A Yes.

6 Q And that would include members of the general  
7 public listening to other radio stations on LILCO's net-  
8 work of radio stations; is that correct?

9 A Only if those stations chose to pick up the  
10 message and rebroadcast it.

11 end #15

12 Reb flws

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1           Q     So there is the possibility, isn't there,  
2 Mr. Keller, that notification to the schools at the  
3 alert level could coincide with notification to members of  
4 the general public?

5           A     (Witness Keller) I think it is a semantic  
6 problem. I agree with you that the members of the general  
7 public could obtain information at the same time as  
8 the notification of the protective action recommendations  
9 to schools.

10                  However, that information would be that there  
11 is no necessity for the general public to take  
12 protective action.

13           Q     And do you assume, Mr. Keller, that because  
14 there is a statement to the general public that there  
15 would be no necessity for the general public to take  
16 any protective action that the general public would, in  
17 fact, not take such protective actions?

18           A     (Witness McIntire) I would subscribe that  
19 the majority of the general public would follow the  
20 instructions put out over the emergency broadcast system,  
21 and I have testified to that fact.

22           Q     Do you have any basis for that statement,  
23 Mr. McIntire? Or is that your opinion?

24           A     That is my professional opinion based on a  
25 review of the literature and personal experience in



1 emergency management for 15 years.

2 Q Have you made any analyses of any kind with  
3 respect to the Shoreham plant?

4 A No, I haven't.

5 But I have no basis to think that the people  
6 on Long Island would behave different from people in  
7 any other parts of the country.

8 A (Witness Kowieski) And this study has been  
9 done by Ohio University and, as a matter of fact, I  
10 am not certain even if I have any information on hand,  
11 but it is very clear, based on the analysis of scientists,  
12 that people will listen to decision makers and will  
13 act accordingly.

14 Q Can you think of any other case, Mr. Kowieski,  
15 where the decision maker in this regard has been a utility?

16 A No, I don't have knowledge of it.

17 Q Would you look, please, at page 71 of your  
18 testimony regarding contention 69.D.

19 69.D states that the plan does not provide for  
20 prior notification of parents if early dismissal is  
21 going to occur in the schools.

22 Do you agree with that statement?

23 A (Witness Keller) I agree.

24 Q And looking at your testimony on contention 69.E,  
25 at the bottom of page 71 you state that your answer is

1 the same for contention 69.C one and two.

2 I gather -- why don't you tell me what your  
3 answer is for question 82 regarding contention 69.E?  
4 Does the plan contain procedures that address this situation  
5 wherein the emergency escalates after early dismissal  
6 procedures have been initiated?

7 A (Witness Kowieski) It is on page 70 of our  
8 testimony.

9 Q And your answer is that there are no provisions  
10 detailing how protective action decisions would be  
11 developed?

12 A That is correct.

13 A (Witness McIntire) That is part of the answer.

14 Q And that you have recommended that the plan  
15 should specify that the early dismissal of schools could  
16 be implemented prior to actual releases, correct?

17 A (Witness Kowieski) That is correct.

18 Q Do you consider this to be a plan deficiency  
19 at this time that there is no such specification in the  
20 plan at this time?

21 A That is -- we consider this to be plan deficiency.

22 Q Now, if you will look, please, on page 72 of  
23 your testimony regarding contention 70. There are two  
24 questions posed at the top of page 72: Does the LILCO  
25 plan identify relocation centers for the schools, and does

1 the LILCO plan contain procedures for reuniting children  
2 with their families at these centers?

3 I take it that your answer to both of these  
4 questions is no; is that correct?

5 A We would have to analyze again our -- read our  
6 answer.

7 A (Witness Keller) The plan does not predesignate  
8 which schools would go to which reception centers,  
9 and there are no procedures for reuniting the children  
10 with their families at relocation centers.

11 The plan, as we reviewed it, did list  
12 reception centers without predesignating which school  
13 would go to which reception center.

14 Q And is it your understanding, Mr. Keller,  
15 that the centers identified in revision 3 of the LILCO plan,  
16 that school children would, indeed, be sent to one or  
17 more of those centers?

18 A We are not --

19 A (Witness Kowieski) If you go to procedures,  
20 which identify special facilities and schools, in most  
21 cases under reception centers there is a statement, "to  
22 be arranged." So it means that the reception center for  
23 school children to be arranged. But if you want me to be  
24 specific, I will have to go again to the procedures.

25 Q Where you state on page 72 of your testimony

1 that an identification of which schools are predesignated  
2 for which reception centers and procedures for reuniting  
3 children with their families could not be located in the  
4 plan, do you consider this to be a plan deficiency,  
5 these two matters?

6 A Well, again, there is no specific requirements  
7 in NUREG 0654 that reception centers would be designated  
8 for school children, special facility. Only there is  
9 a general statement in NUREG 0654 which states that there  
10 should be arrangement for reception center and NUREG 0654  
11 speaks only in general terms.

12 Q So you are saying you do not consider this to  
13 be a plan deficiency?

14 A (Witness Keller) Not specifically a  
15 deficiency. It was something we wanted clarified. We  
16 recognized that the plan itself has said that they would  
17 take the school children to predesignated relocation  
18 centers, and the plan itself does not contain this  
19 predesignation.

20 So within the confines of the plan itself,  
21 it is not complete, as Mr. Kowieski pointed out, that  
22 procedure, it says, "to be arranged." Okay.

23 So the consistency of the plan needs to be  
24 finished, but there are relocation centers designated which  
25 is the requirement of 0654.

1           A     (Witness Baldwin) But the relocation centers  
2 that are designated in revision 3 do not meet -- two  
3 of those three do not meet the criteria and that is  
4 a deficiency. And that criteria being the distance beyond  
5 the boundary of the EPZ, ten-mile EPZ.

6           A     (Witness Kowieski) And this is stated on  
7 page 37 of 60 of the RAC review of LILCO transition plan.

8           Q     The last sentence on page 72, Procedures for  
9 reuniting children with their families at relocation  
10 centers could not be located in the plan, do you consider  
11 that to be a plan deficiency?

12          A     Again, there is no specific requirement in  
13 NUREG 0654 that there would be procedure in place or  
14 identified in the plan for reuniting children with their  
15 families.

16          Q     So Mr. Kowieski, because there is no specific  
17 requirement in NUREG 0654 for there to be such a procedure,  
18 you do not consider the lack of such procedures to be  
19 a plan deficiency?

20          A     As measured against NUREG 0654, that is correct.

21          Q     What about in your personal opinion? Do you  
22 consider it to be a plan deficiency?

23          A     (Witness McIntire) We review plans according  
24 to 0654, not to personal opinions.

25          Q     Do you have a personal opinion in this regard?

1 A No.

2 Q Do you, Mr. Kowieski?

3 A (Witness Kowieski) If I do, I think it is  
4 irrelevant. We deal with, again, plan review as it  
5 compares as measured against NUREG 0654. I don't have  
6 authority to go beyond it.

7 Q Would you tell me your personal opinion,  
8 Mr. Kowieski?

9 A I think it would be helpful.

10 Q It would be helpful to have such a procedure,  
11 correct?

12 A Yes, sir.

13 Q Looking at contention 71, gentlemen, on  
14 pages 73, 74, and 75 of your testimony, Mr. Keller,  
15 I wanted to ask you, first of all, the question --  
16 well, question 84 at the top of the page on page 73,  
17 the question implies again that it is your understanding  
18 that LILCO employees would be used to drive busses in  
19 evacuating school children.

20 I think we have clarified this from the other  
21 day, but am I correct in assuming that you now agree  
22 that LILCO employees will not be used to transport  
23 school children under the LILCO plan, with the  
24 exception of nursery school children?

25 A (Witness Keller) That is what we agreed to, yes.

1 Q And when you say that, in the first sentence  
2 of the answer, "The plan designates the locations of the  
3 various bus companies which have provided letters of  
4 intent to LILCO." would you agree with me that busses  
5 may be stored at locations other than the locations of  
6 the various bus companies identified in the letters of  
7 intent?

8 A (Witness Kowieski) Yes, I do.

9 Q Is it considered a plan deficiency that  
10 the plan does not assign LERO drivers to any specific  
11 bus company?

12 A (Witness Keller) As we stated in our written  
13 testimony, the issue of bus accessibility, including  
14 the drivers getting to the busses and getting the busses  
15 to where they would have to be, would be assessed during  
16 an exercise.

17 Q Looking at page 74, gentlemen, the statement  
18 in bold type at the top of the page which, as you note,  
19 is in the LILCO plan and procedure 3.6.5, do you consider  
20 this statement to provide assurance that school children  
21 will be supervised at the schools in the event of an  
22 emergency at the Shoreham plant?

23 A (Witness Kowieski) Again --

24 A (Witness Baldwin) Yes. If this statement that  
25 is contained in the plan is to be implemented, that is

1 correct.

2 Q And your answer would be the same, Mr. Baldwin,  
3 for the issue of protection of school children on busses  
4 and at the relocation centers, correct?

5 A Yes.

6 Q And so the question remains, whether such  
7 protection would actually be provided to the school  
8 children, correct?

9 A (Witness McIntire) To be verified in an  
10 exercise, yes.

11 Q Can you tell me where such responsibility is  
12 delegated to school officials as set forth on the top  
13 of page 74 of your testimony other than in the LILCO plan?

14 A We have testified about the New York State  
15 law that requires each school in New York State to have  
16 an emergency plan. And this would, in my judgment,  
17 be a component of the general plan that is in effect.

18 Q We talked about that the other day, Mr. McIntire.  
19 I think, in fact, you were unable to tell me any specific  
20 state law provisions in this regard.

21 A Correct.

22 A (Witness Kowieski) However, as we already  
23 testified, the New York State testified during the  
24 Indian Point testimony that such a law exists.

25 Q And you were unable to tell me what state law



1 you are specifically referring to, isn't that correct,  
2 Mr. Kowieski?

3 A That is correct.

4 Q Now, looking at your answer to question 86 on  
5 page 74 -- first of all, I take it that the answer to  
6 the question which is, does the plan contain information  
7 regarding the amount of time necessary to evacuate  
8 children in nursery schools and other school populations,  
9 the answer to that question is no?

10 A (Witness Baldwin) That is correct. It does  
11 not contain that information, with the exception of the  
12 information that is on page 75 at the top of our written  
13 testimony.

14 Q And -- I'm sorry.

15 A And that information is contained in Appendix A  
16 of the evacuation plan.

17 Q And you mention in your answer to question 86  
18 that the plan is predicated on the assumption that there  
19 will be an early dismissal and that, therefore, the  
20 evacuation time estimates for the general public would  
21 include school children, correct?

22 A Yes.

23 Q Now, assume with me that the initial emergency  
24 would not be at the alert level and that school children  
25 would be evacuated directly from the schools.

1 Under that scenario it is correct, isn't it,  
2 that there are no time estimates for the evacuation of  
3 the school children?

4 A That is my understanding of the plan.

5 Q Looking at page --

6 A (Witness Kowieski) Can I have one minute.

7 (Witnesses conferring.)

8 Just for the record, there is a table which  
9 shows how much time would take to evacuate entire EPZ,  
10 and this table specifies the time frames. This would  
11 include the school children.

12 Q Your understanding, Mr. Kowieski, of that table  
13 is that it would include school children that are  
14 evacuated directly from the schools?

15 A (Witness McIntire) The entire EPZ, yes,  
16 including schools.

17 Q Is it fair to say, Mr. Kowieski, that you have  
18 made an assumption then that that table would include  
19 that information?

20 A (Witness Kowieski) Again, if you allow me to  
21 go to table V-8 in Appendix E, it states how much time  
22 will take to evacuate entire EPZ. And I assume that  
23 the school children will be included.

24 Q Would you look, please, at page 75, your  
25 answer to question 87, the second part of the question,

1 Is the number of multiple bus runs sufficient to transport  
2 all school children out of the plume exposure EPZ in  
3 a timely fashion. I take it that at this time you are  
4 not able to answer that question; is that correct?

5 A (Witness Baldwin) That is correct. Because  
6 in the last sentence of our written testimony, we say,  
7 "No specific reference to the need for multiple bus runs  
8 to evacuate all school children could be located."

9 Q And, gentlemen, looking at contention 71.C,  
10 which is on pages 174 and 175 of the Intervenor's  
11 contentions, could you tell me why contention 71.C is  
12 not addressed in your testimony?

13 A (Witness Kowieski) I would defer this to  
14 Mr. Glass.

15 A (Witness Keller) We think we were told to  
16 leave it out.

17 MR. GLASS: The copy of the contentions that  
18 I have shows that contention 71.C had been struck,  
19 that it was not admitted by the ASLB.

20 MS. MC CLESKEY: As does mine.

21 WITNESS BALDWIN: And so does ours at this time.

22 MS. MC CLESKEY: I will just note, so there  
23 is no question about it, that Mr. Glass's copy is not  
24 from my copy, and I have never seen his. And they  
25 appear to be marked up differently.

1 BY MR. MILLER:

2 Q The answer to the question is, because you  
3 understand the contention was struck, you did not address  
4 it?

5 A (Witness Kowieski) That is correct.

6 MR. MILLER: Judge Laurenson, I have other  
7 questions, but in light of the Board's ruling in this  
8 regard, I am going to turn the microphone over to  
9 Mr. McMurray.

10 MR. GLASS: Mr. Miller, I do have the letters  
11 that you had requested earlier dealing with revision 4.  
12 If you want, I can distribute it now and you can have  
13 an opportunity to look at it now and deal with it or  
14 come back to it later.

15 It is your choice.

16 MR. MILLER: I would suggest maybe you could  
17 give me the letters. Mr. McMurray could go ahead.  
18 And I can come back maybe at the end.

19 MR. GLASS: Certainly.

20 BY MR. MC MURRAY:

21 Q Gentlemen, let me refer you to page 29 of your  
22 testimony. We are dealing now with the issue of  
23 mobilization.

24 Does everybody have it?

25 A (Witness Keller) Yes.

1 Q Let me direct -- I don't know who the best  
2 person to direct these questions to, let me just go  
3 with the RAC chairman here and anybody else can jump in.

4 JUDGE LAURENSEN: Maybe you could move the  
5 microphone a little closer, Mr. McMurray.

END 16

6 MR. MC MURRAY: I am sorry.  
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1 Q Lets get our terms straight first of all, Mr.  
2 Kowieski. Can we agree that mobilization is the process  
3 after notification up to the time that a worker is in his  
4 or her field position?

5 A (Witness Kowieski) I would say that is a fair  
6 characterization.

7 Q Okay. And it includes all the processes inbetween  
8 such as traveling to one's initial reporting site, being  
9 briefed, obtaining dosimetry, obtaining necessary equipment,  
10 then traveling, if necessary to one's field location, et  
11 cetera.

12 A Correct?

13 A Again, you are referring to deployment time.

14 Q Let us agree, that when I use the term, 'mobili-  
15 zation,' I am also including after one has received equipment,  
16 also then going to one's field location.

17 A If we agree on definition, that is fine.

18 Q Just so we are using the same terms.

19 A (Witness Keller) In light of that redefinition  
20 that we just agreed to just now, our written testimony on  
21 page 29 is not in accordance with that definition.

22 Q It is not. You did not understand that to be  
23 the meaning of the term, 'mobilization,' used in Contention  
24 27?

25 A No. This is the discussion that Mr. Kowieski

1 began to get into. The mobilization time which we quote  
2 on page 29, the DOE RAP team, does not include all the things  
3 that we just agreed to include in a definition of mobiliza-  
4 tion time that was just discussed here.

5 We have no problem using the definition we  
6 agreed to just now, but when we wrote this testimony we were  
7 using something different.

8 Q Okay. So, the inconsistency then would be with  
9 respect to the DOE field monitoring teams, and the times  
10 that you saw reported in the Plan, correct?

11 A That is correct.

12 Q Other than that, would you say that the term,  
13 'mobilization' would not change.

14 A (Witness McIntire) Let's try it and see.

15 Q Mr. Kowieski, could you just explain briefly  
16 why timely mobilization of emergency workers is important?

17 A (Witness Kowieski) The timely mobilization of  
18 emergency workers is important in order to have an effective  
19 response.

20 Q In other words, it is important to staff the  
21 facilities that need to be staffed, correct?

22 A That is correct.

23 Q It is important to have the people out in the  
24 field who need to be there in a timely fashion, correct?

25 A That is part of it.

1 Q Without timely mobilization, one cannot have  
2 an effective emergency response, correct?

3 A (Witness McIntire) I would say it depends on,  
4 again, the definition of, 'timely,' which we have not  
5 discussed, and it depends on the circumstances of the  
6 specific type of incident.

7 I don't think we can make blanket statements  
8 like that.

9 Q How do you understand the term, 'timely?'

10 A In terms of what we are talking about,  
11 mobilization of emergency response?

12 Q Did you think we were talking about anything  
13 else, Mr. McIntire?

14 A I wanted to be sure.

15 Q You can be sure.

16 A Thank you. Timely would be a mobilization that  
17 would get the appropriate emergency workers into decision-  
18 making or response positions in order to take effective  
19 preparedness actions to protect the public.

20 A (Witness Keller) Considering the conditions  
21 at the time. This is very critical. In the middle of a  
22 hurricane, right, a timely response might have a different  
23 time frame than a timely response on a beautiful summer  
24 day.

25 So the timeliness of a response has got to



1 consider the situation at the time.

2 Q So, in some cases timeliness might mean response  
3 in a matter of minutes, and in other cases it might mean  
4 response in a much longer time frame, correct?

5 A (Witness McIntire) Yes, definitely.

6 Q Mr. Kowieski, lets focus on field workers. Not  
7 the LERO director and the hierarchy, but people out in the  
8 field; bus drivers, traffic control guides, route alert  
9 drivers. People like that.

10 Can you generally explain to me what the various  
11 functions are that those people would have to go through,  
12 various processes, before they go out into the field?

13 A (Witness McIntire) I think it might be more  
14 helpful if we are going to do this, to do it by emergency  
15 worker-type rather than try to categorize various types of  
16 emergency workers, because they would be different.

17 Q You don't think that you could generalize as  
18 far as field workers go?

19 A I think it would be much more helpful to be more  
20 specific.

21 Q Oh. Then, let's take a bus driver.

22 A (Witness Kowieski) The bus driver first of all  
23 would be notified. At a certain point would be asked to  
24 report. He or she would report to the staging area, and  
25 at a certain point obviously would pick up the bus, drive

1 the bus to the designated location.

2 Obviously, as Mr. Keller reminded me, also  
3 when they go and pick up their pass we would expect that  
4 they would pick up dosimetry, and also maps of evacuation  
5 routes.

6 Q So, your understanding is once a worker arrives  
7 at the staging area, there are still things to be done before  
8 he is deployed, correct?

9 A That is correct.

10 Q One has to pick up dosimetry?

11 A That is right.

12 Q Be briefed on the situation?

13 A Sure.

14 Q Pick up equipment like radios and other sorts of  
15 things?

16 A Sure.

17 Q Okay. And then, let's take this hypothetical  
18 bus driver then, this bus driver would be dispatched from  
19 the staging area to a bus company garage, correct?

20 A That is correct.

21 Q And then pick up the bus?

22 A That is right.

23 Q And then go eventually to a transfer point,  
24 correct?

25 A That is right. Go to a designated area to pick

1 general population, or special facility population.

2 Q In the case of a bus driver, where is his reporting  
3 location in the field?

4 A The staging area.

5 Q But once he has gotten his dosimetry, where is  
6 his reporting area in the field?

7 A (Witness Keller) Once he has his dosimetry,  
8 he gets his bus. Once he gets his bus, he goes to the  
9 transfer point.

10 Q So, there are a number of steps that are gone  
11 through before one gets out in the field?

12 A (Witness Kowieski) Sure.

13 Q Now, the LILCO Plan, getting back to various  
14 facilities and things, describes a number of facilities that  
15 are important to the emergency response, isn't that correct?

16 A That is correct .

17 Q And one, of course, is the EOC.

18 A That is right.

19 Q There are, of course, the staging area facilities,  
20 correct?

21 A That is correct. Three staging areas.

22 Q Three staging area facilities. There are also  
23 the transfer point facilities, correct?

24 A Not facility. Parking lots.

25 Q You would not categorize them as facilities?

- 1 A No.
- 2 Q Okay. Let's go for a second to NUREG 0654, H.4.
- 3 Does everybody have that in front of them?
- 4 A Yes.
- 5 Q Mr. Kowieski, that states that each organization
- 6 shall provide for --
- 7 A Page 4?
- 8 Q H.4.
- 9 A I am sorry.
- 10 Q I am sorry.
- 11 A I am ready.
- 12 Q Criterion H.4 states that each organization shall
- 13 provide for timely activation and staffing of the facilities
- 14 and centers described in the Plan, correct?
- 15 A That is correct.
- 16 Q Now, we have agreed -- strike that. This
- 17 criterion was rated as adequate, correct?
- 18 A (Witness Keller) Provisionally adequate, that
- 19 is correct.
- 20 Q You say provisionally, Mr. Keller. Why is that?
- 21 A Well, as we discussed two days ago, in the RAC
- 22 review there were certain things which --
- 23 Q This is the legal authority issue?
- 24 A No.
- 25 Q It has an asterisk.

1           A       That is correct, but it also has in the second  
2 paragraph of the discussion, the Plan is adequate in addressing  
3 this element, provided modifications and clarifications  
4 outlined below are incorporated in the Plan.

5                   And we have used the term, 'provisionally adequate'  
6 for those elements which have this kind of discussion in  
7 them.

8                   What we are saying is that most of the things  
9 that we looked at in regard to this criteria element were  
10 there, but there were some things which were not there, and  
11 the weight or the balance was that more were there than not  
12 there, and we said, okay, it is adequate but you have to make  
13 these changes in the Plan.

14                   And if those changes are not make, presumably  
15 in Revision 4, this would become a not adequate rating.

16           Q       Okay. Thank you. Let's go to the RAC review  
17 concerning H.4. Now, Mr. Kowieski, the first paragraph  
18 says that the activation and staffing of the local EOC  
19 by LERO personnel is specified in a section of the Plan.  
20 Do you see that?

21           A       (Witness Kowieski) Yes, I do.

22           Q       The RAC report has not mentioned any of the  
23 staging areas, correct?

24           A       That is correct.

25           Q       And isn't it true that in looking at this

1 particular element, the RAC did not consider the staging  
2 areas, and whether they would be timely activated and  
3 staffed.

4 A We did consider staging areas. I am not --

5 Q This is not set out in the report, is it?

6 A (Witness Baldwin) That is correct.

7 A (Witness Kowieski) That is correct.

8 A (Witness Baldwin) It is not specifically in the  
9 RAC report, if that is what you mean.

10 A (Witness Keller) But because it is not  
11 specifically stated in the RAC report does not mean it was  
12 not considered.

13 Q Well, what criteria did you have for determining  
14 whether or not something should be put in, and something  
15 should be left out?

16 A (Witness Kowieski) The procedure has been  
17 developed, that the procedure we read, we discussed, we  
18 understand. We understand the concept. If you ask me  
19 if it is going to work, I hope it is going to work. We  
20 will tell after the exercise.

21 Q That doesn't answer my question, Mr. Kowieski.  
22 What criteria did you have to determine whether or not  
23 something would be discussed in the RAC report, and other  
24 things would not be discussed in the RAC report?

25 A First of all, professional judgment; but also,

1 to save, basically, the paper.

2 If we evaluated this element to be adequate,  
3 you can put only so much justification why we rate it  
4 adequate. Each time we found a problem in the Plan, we  
5 identified the problem and we were very specific.

6 Q Well, you did specifically mention the local  
7 EOC, did you not?

8 A That is correct.

9 Q And you did state that the activation and  
10 staffing of the local EOC is specified in certain sections  
11 of the Plan, correct?

12 A That is correct.

13 Q You did not say that timely staffing of the  
14 staging areas was in specific portions of the Plan, correct?

15 A Well, that is also correct, and we feel the  
16 EOC is where you have the brain of the operation, command  
17 and control, and that is why we cited it.

18 Q The staging areas are less important in your  
19 mind?

20 A What I am saying -- it is not less important.  
21 What I am saying is the command and control, the decision-  
22 making, is stationed at the EOC, and we felt to cite the  
23 EOC was proper.

24 Q Mr. Keller, you just said yes, you thought that  
25 the staging areas were less important.

1 A (Witness Keller) Yes, I do, personally.

2 Q Why?

3 A Because decisions can be made, protective  
4 actions recommendations made, without complete staffing  
5 of the staging areas, in a worst case, or in a very bad  
6 case situation. As Mr. Kowieski points out, the brains  
7 are at the EOC.

8 Q Anything else?

9 A (Witness Baldwin) I would agree with both  
10 Mr. Keller's and Mr. Kowieski's characterization, and in  
11 addition, the mobilization places where the emergency workers  
12 are to arrive, are specified in the procedures for the EOC,  
13 the EOF, and the three staging areas, plus the three  
14 relocation centers, and the emergency news center, and those  
15 are all specified in 3.3.3, in the standby and mobilization  
16 procedure, and that procedure also specifies the provisions  
17 for standby and report for duty situations in the event of  
18 an unusual event, alert, site area, and general emergency.

19 So, all of the information that we would normally  
20 look for is there with the exception of the conditions that  
21 we have specified in response to H.4, which we have set forth  
22 in the RAC report.

23 Q What were the comments during the RAC review  
24 regarding the timeliness of the activation of the staging  
25 areas?



1           A       (Witness Keller) Basically, the agreement  
2 that this was an adequate representation in the Plan,  
3 because of the fact that these procedures were there, as  
4 Mr. Baldwin talked to you. There were some RAC members  
5 who were concerned about the notification of the State EOC.

6                   There was one RAC member concerned about the  
7 legal issue, and we have an asterisk on this this one. The  
8 rest of the concerns, if there were concerns, were reflected  
9 in these, as we call them, provisional conditions.

10                   The Plan has an adequate, with a few exceptions,  
11 discussion of the criteria element. Whether or not it can  
12 be implemented is another issue.

13           Q       My question, Mr. Keller, is what discussion was  
14 there of the staging areas during the RAC review, and how  
15 they met the criteria of H.4?

16           A       My recollection is that the discussion said  
17 the procedure is there, which discusses the staging areas,  
18 therefore the Plan covers what is required.

19           Q       The procedure is there. There is a procedure?

20           A       In the Plan.

21           Q       Therefore the criterion H.4 is adequate, because  
22 the procedure is there?

23 End 17.  
24 Sue fls.

25

#18-1-SueT 1

2 A (Witness Keller) The plan contains those  
3 things which are required by the criteria element with  
4 the exception of what we have already listed.

5 Q Well, let me ask you this. With respect to  
6 the issue of timely activation, and I emphasize timeliness,  
7 what criteria were used to determined whether the plan  
8 assured timely activation of the staging areas?

9 A The plan doesn't assure anything.

10 Q What were the criteria that led you to give an  
11 adequate rating and determine that the plan was adequate  
12 with respect to timely activation of the staging areas?

13 A Judgment. Expert judgment.

14 Q What criteria?

15 A (Witness Baldwin) Well, I can speak on my own  
16 behalf here. What I used was to go to the provisions  
17 contained in the plan, and to look at Procedure 3.3.3,  
18 I believe it was that I just cited to you, and to look  
19 through that matrix and see that there were provisions of  
20 standby mobilization of emergency workers and actually  
21 specifications for when they would report to duty, where  
22 they would report to duty, and those I considered to be  
23 sufficient.

24 Q Well, let me ask you specifically. I want  
25 specifics in the plan, Mr. Baldwin. What particular parts  
of the plan led you to believe that there would be timely

#18-2-SueT 1

activation of the staging areas?

2           A       The specific portion of the plan which I am  
3 speaking of is in the implementing procedure.

4           Q       Which implementing procedure?

5           A       Procedure 3.3.3.

6           Q       Okay.

7           A       I believe that is in Volume I.

8           Q       Yes.

9           A       Volume I. And it's Attachment 1, Page 1 of 3.

10          Q       Attachment 1.

11          A       And also Attachment 2.

12          Q       Attachment 1 and Attachment 2?

13          A       Yes. And I will even go so far as to say the  
14 Attachment 3, 4, 5, 6 and 7. The rosters of particular  
15 operations positions are typically controlled, because  
16 they contain the specific names of individuals and their  
17 home telephone numbers and their office telephone numbers.

18          Q       Let's go back to Attachment 1. This is a chart  
19 which sets out whether or not certain emergency workers  
20 or categories of workers are to report or standby during  
21 various stages of an emergency, correct?

22          A       That's correct.

23          Q       And what is it about this chart that leads  
24 you to say that activation of a staging area would be  
25 timely?

#18-3-SueT 1

2 A Because the provision is here to put emergency  
3 workers on standby or to bring them to full activation  
4 by reporting them to duty at various phases.

5 Q So the fact that certain people are designated  
6 to report to a staging area gives you assurance that that  
7 reporting -- that their reporting will be timely?

8 A It gives me an indication that the necessary  
9 planning has been done. It gives me no assurance.

10 Q Thank you. With respect to Attachment 2, that  
11 tells certain individuals to go to certain places, correct?

12 A That is correct.

13 Q What, in fact, it does is designate who will --

14 A Which emergency workers are designated to arrive  
15 at which emergency locations, response locations.

16 Q It doesn't tell you how quickly they will get  
17 there, correct?

18 A That's correct.

19 Q Are the rest of these attachments rosters?

20 A That's correct.

21 Q The fact that there are rosters again does not  
22 indicate to you that these people on the rosters will report  
23 in any specific amount of time, does it?

24 A That's correct.

25 Q Thank you.

A (Witness Kowieski) However, as we already stated,

#18-4-SueT 1

2 there is no specific requirement outlined in NUREG document  
3 that would ask that this, any given individual will report  
4 to any station, duty station, within thirty-five minutes  
or forty-five minutes.

5 Q What it asks for is timely activation, right?

6 A Well, I understand timely. Timely is already  
7 discussed, the issue of timely. We -- there will be  
8 exercise. If individuals will be able to arrive, to be  
9 on time to perform their duties, that will be timely.

10 (Witness Baldwin) And there is one other thing  
11 to make sure that the record is straight with our written  
12 testimony. And in our written testimony in the answer to  
13 Question 47, which is Contention 27.F, we specifically  
14 state that the plan contains no information upon which  
15 to base a determination as to whether the arrival of  
16 emergency workers required to report to field assignments  
17 would be timely.

18 Q So, in other words, you can't really determine  
19 whether H.4 is met until the exercise is held, correct?

20 A (Witness McIntire) We are getting back to this  
21 current problem. From a planning perspective, the RAC  
22 has concluded that the planning standard has been met.  
23 Whether it can be implemented again will be shown in an  
24 exercise.

25 Q But with respect to timeliness, the only

#18-5-SueT

1 indication of timeliness comes from the attachments that  
2 Mr. Baldwin has pointed out, correct?

3 A This has led to the conclusion from a planning  
4 perspective that the necessary planning has been done to  
5 ensure a timely deployment which will be verified at an  
6 exercise.

7 Q Timely deployment will be ensured by this,  
8 by these attachments?

9 A Assured enough to meet the planning standard.  
10 If we want to get down to semantics I will try it again  
11 if you prefer.

12 But the necessary planning has been done that  
13 a timely deployment from a planning perspective will  
14 occur.

15 Q Have you attempted in any way to determine  
16 how far away the LERO workers work or live from their  
17 initial reporting post, let's say, from the staging areas?

18 A (Witness Kowieski) We have not.

19 Q Okay.

20 A (Witness McIntire) Again, if we are going to  
21 get into semantics, this is not really a planning function.

22 Q You would agree with me, wouldn't you, Mr.  
23 McIntire, that -- let's take the extreme case, that if  
24 somebody lived in California, he would probably get to the  
25 Shoreham plant a lot later than somebody who lived in

#18-6-SueT 1

2 Hauppauge, correct? If they were called at the same time  
3 to report?

4 A There would be two factors to be considered.  
5 One would be the method of going to -- from the place,  
6 we will say, of residence to the emergency operating site  
7 and the route. And conceivably the person that went  
8 around the world from Hauppauge would arrive later than  
9 the person who came directly from California if they went  
10 by the same method of transportation.

11 Q I didn't think my case could be beat, but you  
12 did beat it.

13 (Laughter.)

14 A I'm sorry.

15 Q Let's say that the most direct route was taken  
16 and they are both travelling by car and both notified at  
17 the same time, wouldn't you agree that somebody living  
18 further away is more likely to report later?

19 A More likely, yes.

20 Q In other RAC reviews -- strike that.

21 In the case of other plants, has FEMA attempted  
22 to determine how long it took for people to travel from  
23 their homes or from the places they were notified to the  
24 place where they were to go to get their dosimetry and  
25 be briefed?

A Did you use the term "review?" RAC review?

#18-7-SueT 1

Q I said in the case of other plants --

2

A Plans? You are using the term "plans" then?

3

Q Plants.

4

A Plants. Okay.

5

Q Okay. I'm sorry. Plants. Has FEMA attempted

6

to determine how long it takes for people to, after they

7

are notified, get to their initial reporting locations?

8

And I'm talking specifically about places that  
are akin to staging areas.

10

A Yes, we have in the exercise.

11

Q And what criteria are used to determine whether  
or not that reporting or that time is timely?

13

A Basically, expert judgment and the fact of  
whether the reporting time had any substantial negative  
impact on the simulated emergency response actions, or  
the actual actions in some cases.

17

Q When you say professional judgment, what sort  
of considerations go into professional judgments?

19

A (Witness Kowieski) If people respond and are  
there when you need them.

21

(Witness Keller) For example, I think maybe  
in the Indian Point situation, and in some of the other  
cases, in Nine Mile Point, part of the response requires  
State of New York personnel to be deployed from Albany to  
these sites. We would not generally, using your analogy,

25



#18-8-SueT

1 assume that the Albany personnel -- we would think the  
2 County personnel would be deployed prior to the Albany  
3 personnel. If the guy from Albany got there before the  
4 guy from the County, the County's individual would not be  
5 timely.

6 Q You don't use any objective standards then for  
7 certain time frames within which someone must report?

8 A (Witness McIntire) You said objective standards?

9 Q Objective standards.

10 A No.

11 Q It's all subjective?

12 A Expert judgment as opposed to subjective would  
13 be my term.

14 Q Are there limits -- is there a certain time  
15 frame in which you would definitely say would be untimely  
16 reporting time -- that was a bad question. Strike that.

17 There must be a point, Mr. McIntire, where you  
18 can say that this person took X amount of time to report  
19 that is untimely.

20 A Basically, evaluate what that individual's  
21 responsibilities were in the plan and to see if those  
22 responsibilities were carried out in the manner that did  
23 not substantially negatively impact on the exercise.

24 Q You have read, you said, some of the testimony  
25 submitted by the parties in this case, correct?

#18-9-SueT

1 A Perused is my term I believe.

2 Q Are you aware that -- let me throw this out to  
3 everybody. Mr. Kowieski, are you aware that on average  
4 LERO workers who were supposed to report to the staging  
5 areas work an hour away from the staging areas under normal  
6 commuting conditions?

7 A (Witness Kowieski) I don't have any specific  
8 knowledge about that. But I wouldn't be surprised if  
9 some of the emergency workers may live as far as one hour  
10 away.

11 Q I'm talking about on average, Mr. Kowieski. Do  
12 you understand that to be true?

13 A I don't have any specifics to confirm or just  
14 disagree with you.

15 (Witness McIntire) If it might be helpful,  
16 I believe I am the only member of the panel that has read  
17 any of the prefiled testimony or the cross-examination.

18 Q You did not attempt, Mr. Kowieski, and neither did  
19 the RAC, to determine how far away LERO workers live or  
20 work from their staging areas, correct?

21 A (Witness Kowieski) That's correct.

22 Q Are you aware of any other sites where the  
23 average, on average the emergency workers for a particular  
24 site, and I'm talking about the field workers, not certain  
25 people that have to come down from Albany --

#18-10-SueT 1

A No, I have not performed such a survey.

2

Q Well, you have got to let me finish my question,  
3 if for no other reason than for the record.

4

A I'm sorry.

5

Q Okay. Are you aware of any other plant where  
6 the field workers on average live an hour away from their  
7 initial reporting sites?

8

A I'm not aware of it. But, again I have not  
9 performed any surveys or an analysis of all emergency  
10 workers to be able to draw a conclusion of this nature.

11

(Witness McIntire) Again, I think we should  
12 state in the exercise we are not concerned with where people  
13 live; we are concerned with whether they can undertake  
14 successfully the emergency responsibilities that they are  
15 assigned in the plan.

16

Q And that can be affected by how far away they  
17 live or work from their reporting stations; isn't that  
18 correct?

19

A That may be one of the factors, yes.

20

Q But you haven't looked into that yet?

21

A We don't look into it. We look into whether  
22 they are where they should be in time to carry out the  
23 actions they are assigned in the plan, to not negatively  
24 impact upon the exercise.

25

Q With respect to -- let's assume workers are

#18-11-SueT<sup>1</sup>

1 mobilized, and again let's talk about the field workers  
2 going to the staging areas. Isn't it true that --

3 A (Witness Kowieski) Again, I suggest that we  
4 stick to the definition that we agreed to initially. You  
5 are saying let's say that, if I can paraphrase, that the  
6 emergency workers are mobilized and they are going to  
7 staging area.

8 I thought already it was inclusive, that they  
9 are already at the staging area.

10 Q Well, let's run through this quickly. Mobiliza-  
11 tion is the process from notification to going out in  
12 the field.

13 A (Witness Keller) No, to their work location or  
14 assignment. I think that's what we agreed to. Maybe I'm  
15 wrong.

16 But I thought we agreed to from notification  
17 until arrival at their assignment.

18 Q That's right, like out in the field, like the  
19 traffic guide having to direct traffic.

20 A But the traffic guide at the staging area is not  
21 at his work location.

22 Q Right. Okay. Let me just start all over  
23 again. We will do fine.

24 Let's say that --

25 MR. GLASS: Mr. McMurray, the witnesses have been

#18-12-SueT1

2 going on for awhile. Would this be a good time to just  
3 take a break? I know you are having some problems with  
4 some definitions, but I think everyone will be a little  
5 better off if they could come back fresh.

6 Could we take our second break at this point?

7 MR. MC MURRAY: I guess I have no objection,  
8 Judge Laurenson.

9 JUDGE LAURENSEN: All right. We will take a  
10 ten minute recess.

11 (Whereupon, the hearing is recessed at 4:50 p.m.,  
12 to reconvene at 5:00 p.m., this same day.)

end #18

Reb flws

13  
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25

1 JUDGE LAURENSEN: Mr. McMurray?

2 BY MR. MC MURRAY:

3 Q Mr. McIntire, earlier we were talking about  
4 whether or not there are any objective standards to  
5 determine whether one's reporting time to some  
6 place like a staging area was timely.

7 Do you recall that conversation?

8 A (Witness McIntire) Yes.

9 Q At the staging area, there are other functions  
10 that need to be performed such as getting dosimetry  
11 and being briefed.

12 Are there any objective criteria to determine  
13 whether those particular functions are being performed in  
14 a timely fashion?

15 A No.

16 Q Once one has performed all the functions at  
17 a staging area, one is then deployed into the field,  
18 and the question is, are there any objective standards to  
19 determine whether that deployment time is timely?

20 A No.

21 A (Witness Kowieski) One clarification, one  
22 addition. Mr. Keller?

23 A (Witness Keller) As we have testified in our  
24 written testimony, for the mobilization of field monitoring  
25 teams, 0654 requires a mobilization time defined somewhat

1 differently than we had agreed to. And that is in the  
2 plan.

3 But there is no guidance in 0654, if, for  
4 example, the plan said that we will mobilize our field  
5 teams in three weeks, that would be something in the plan.  
6 I think our professional judgment would say that would  
7 not be timely. But there is no guidance on what is  
8 timely or what is not timely.

9 But the only requirement is for the mobilization  
10 of field monitoring teams. No other field emergency  
11 workers have a requirement of a mobilization time.

12 Q Did I just hear you say that NUREG 0654 offers  
13 no criteria for what is timely or what is not timely?

14 A That is correct.

15 A (Witness McIntire) Objective criteria.

16 Q Does NUREG 0654 offer any subjective criteria?

17 A (Witness Keller) No.

18 A (Witness Baldwin) I would like -- here is  
19 exactly what it says. It says, under I.8 -- I don't  
20 want to read the whole thing.

21 It says, for field monitoring teams, this is  
22 specifically regarding, and it says that meeting this  
23 criteria "shall include activation, notification means,  
24 field team composition, transportation, communication,  
25 monitoring equipment and estimated deployment times."

1 Q As you said, that is restricted to the field  
2 monitoring teams, right?

3 A That is correct.

4 Q Other than field monitoring teams, your answer  
5 still holds, right, Mr. Keller?

6 A (Witness Keller) I think my answer was that  
7 other than -- yes.

8 Q Thank you.

9 Now, let's get back to where we were before  
10 the break.

11 You would agree, wouldn't you, that most of  
12 the workers who are supposed to go to the staging areas  
13 are going to have to travel east towards their staging  
14 areas? Wouldn't you agree with that, Mr. Kowieski?

15 (Witnesses conferring.)

16 A (Witness McIntire) We have no information  
17 of where they are coming from and which way they will  
18 travel to get to the staging areas.

19 Q You are not really familiar with the demographics  
20 involved?

21 A (Witness Keller) You already got us to  
22 testify that we don't know where they live or where they  
23 work, so we cannot say that they would travel east to  
24 the staging areas.

25 Q Assume for me, please, that the workers are going



1 to be traveling to the east. They are west of the EPZ  
2 and traveling east towards the three staging areas that  
3 are on the perimeter of the EPZ. Okay? Got that?

4 In your opinion, during a radiological  
5 emergency, isn't it true, Mr. Kowieski, that those  
6 workers could run into more than the normal amount of  
7 traffic as a result of the emergency?

8 A (Witness Kowieski) Again, you have to understand,  
9 you are already assuming that there will be evacuation  
10 in process before even a decision is made to evacuate.

11 Q You assumed the evacuation. I didn't assume  
12 an evacuation.

13 A I don't understand why there will be heavier  
14 traffic than usual.

15 Q Let's say that it is a site area emergency and  
16 therefore the various, the hundreds of field workers that  
17 are supposed -- that are expected to go to the staging  
18 areas are, in fact, notified at the site area emergency  
19 stage, and then they are heading toward the staging areas.

20 Now, isn't it true that they will be encountering  
21 circumstances that will slow down their response time  
22 just because of the traffic conditions?

23 A I don't have information really to support  
24 whatever you are saying.

25 Q That is not anything you consider?

1           A     (Witness McIntire) The answer is, we don't  
2 have any information on why there would be heavier -- I  
3 guess that was your term -- heavier than normal traffic  
4 or traffic that would impair their ability to reach the  
5 staging areas.

6           Q     You can't think of anything offhand, Mr. McIntire,  
7 as a professional?

8           A     I can think of things, certainly.

9           Q     As a professional?

10          A     Certainly.

11          Q     What are some of those things?

12          A     Some of the things -- the time of the day,  
13 whether there are accidents, weather conditions. But you  
14 didn't put any conditions on yours. You made it a general  
15 statement.

16          Q     The conditions were as a result of the emergency.

17          A     Okay. But as a result of that, I didn't judge  
18 anything in my own mind that would generate heavier than  
19 normal traffic traveling to the staging areas that would  
20 impair their ability to respond.

21          Q     Let me just clarify your answer. You are  
22 saying that you cannot think of any circumstances or  
23 conditions generated by the fact that the emergency is  
24 occurring that would impede or slow down the travel of  
25 emergency workers as they are going east towards their

1 staging areas?

2 A I said that in response to your first question.  
3 Now that we have had this discussion and I have mentioned  
4 a few things, I can certainly think of things such as I  
5 have mentioned.

6 Q Is weather -- you mentioned weather, right?

7 A That was one of them, yes.

8 Q Is weather generated by the emergency condition  
9 at the Shoreham plant?

10 A No.

11 Q I am talking about conditions generated by  
12 the emergency, Mr. McIntire.

13 A Excuse me. I misunderstood the question.

14 Q Now that you understand it, do you want to give  
15 me an answer?

16 (Witnesses conferring.)

17 A (Witness Kowieski) It is possible that what  
18 you are referring to is the evacuation of on-site personnel.  
19 Is that what you are referring to?

20 Q Well, it is clear that the panel can't think of  
21 anything. Let me try to throw out some possibilities.

22 At the site area emergency, the public has  
23 been notified that there is an accident or a problem of  
24 some kind at the plant, correct?

25 A (Witness Keller) An emergency.

1 Q There is an emergency.

2 And site area is pretty serious, right?

3 A Pretty serious? I don't agree with pretty  
4 serious.

5 Q Would you agree with serious?

6 A To the site. These words were chosen with  
7 some care, I think. I had nothing to do with choosing  
8 them. But it is my understanding that the notification  
9 of unusual event, alert, and site area emergency, and  
10 general emergency were chosen with care.

11 As far as the site is concerned, it is serious.  
12 As far as off-site is concerned, the site area emergency  
13 is not serious.

14 Q We won't get into semantics.

15 We have agreed that at the site area emergency  
16 stage the public knows something is going on?

17 A Correct.

18 Q Now, isn't it true or isn't it likely that  
19 workers who live to the west of or who work west of the  
20 EPZ will want to rejoin their families so that whatever  
21 protective actions are taken will be taken as a family unit?

22 Is that likely to happen?

23 MR. GLASS: I have to object. This sounds like  
24 we are getting into the area that was dealt in in phase one  
25 dealing with conflicts on the part of emergency workers.

1 We are now talking or at least the question  
2 seems to be proposing that emergency workers are going  
3 to be joining their families. I thought that was dealt  
4 in great detail in phase one of the hearing.

5 MR. MC MURRAY: I am sorry, Mr. Glass. You  
6 are confused. We are talking about workers. I am  
7 talking about the general public, people who work to  
8 the west of the EPZ, not LERO workers, just general workers.

9 MR. GLASS: Are you talking prior to a  
10 notification to take any action?

11 MR. MC MURRAY: I am talking at the site  
12 area emergency. That is the only condition.

13 WITNESS KELLER: Let me ask for clarification.

14 JUDGE LAURENSEN: We can't all be talking at  
15 one time.

16 MR. GLASS: We may have the situation then  
17 that you are dealing in one of the other areas that we  
18 dealt in previously which had to do with evacuation  
19 shadow phenomena.

20 JUDGE LAURENSEN: Let's go back and rephrase  
21 the question and we will see if there is objection to it,  
22 or if these witnesses understand it as well.

23 BY MR. MC MURRAY:

24 Q Isn't it true, Mr. Kowieski, that general  
25 members of the public, wage earners working to the west of

1 the EPZ, upon hearing of this accident, this site area  
2 emergency at the plant, are likely to leave their jobs,  
3 leave their places of work, where they are shopping or  
4 whatever, and begin to head east to go back into the  
5 EPZ and join up with their families so that the protective  
6 actions, whatever protective actions they are going to  
7 take, can be taken together?

8 A (Witness McIntire) I wouldn't use the term  
9 "likely." I would use the term "possible." I think  
10 many other conditions and specifications would have to  
11 be, you know, injected into the scenario before we could  
12 answer any further.

13 Q It is possible though.

14 A Certainly.

15 Q Under those conditions which you say are  
16 possible, Mr. McIntire --

17 A I think I said may be possible.

18 Q -- isn't it true that enough traffic could be  
19 generated that it would slow down, to whatever degree,  
20 emergency workers attempting also to travel east?

21 A I think we are going to have to get more  
22 information. Are we postulating a situation that  
23 started at site area emergency, where virtually no  
24 emergency workers were mobilized before hand? That is  
25 one case. If we are talking a progression of events that

1 started at the lowest level, that would probably be  
2 another circumstance.

3 Q Well, your answer depends really on when  
4 workers are mobilized, at what stage they are notified  
5 and told to report then, right?

6 A To answer, I think I would need more information.

7 Q Do you understand that traffic guides, bus  
8 drivers, other field workers who are supposed to go to  
9 the staging areas are told to report at the site area  
10 stage? Do you understand that, Mr. Keller? You are  
11 nodding your head.

12 A (Witness Keller) That is my understanding,  
13 that the majority of these workers are told to go at  
14 that point.

15 I would like a clarification. I think we  
16 are still hypothetical. We had all the workers on one  
17 side of the zone still, I think.

18 Q We are talking about -- that's right. We are  
19 talking about the emergency workers who live to the west  
20 of the plant and the wage earners.

21 A But I think we had gone to a hypothetical  
22 situation which you asked us to go with you where all of the  
23 emergency workers lived on the west side of the zone and  
24 were going to have to drive to the east to report to these  
25 three staging areas.

1 Q Assume for me that the majority, the significant,  
2 vast majority of those emergency workers do live to  
3 the west of the plant, to the west of the EPZ.

4 A But we are still hypothetical or assumption.

5 Q The plan is hypothetical.

6 Now, did you have a clarification --

7 A No. I just wanted to make sure we were still  
8 with this hypothetical situation.

9 Q Now, the question is --

10 A (Witness McIntire) Clarification. You are  
11 not asking us about something in the plan?

12 Q I am asking you whether or not in your  
13 professional judgment or whether there is something in  
14 the plan that might indicate this to you, whether or not  
15 conditions could prevail where the travel of those  
16 emergency workers is slowed by the very fact that workers  
17 in the general public are also moving to the east in order  
18 to rejoin their families?

19 A And I think we have testified that may be  
20 possible.

21 Q Does FEMA intend to review or evaluate whether  
22 or not that may, in fact, happen at Shoreham?

23 A I hesitate to answer because I don't want to  
24 have this sound wrong, but I am afraid it will no matter  
25 what I say.



1           If you are asking if FEMA is going to try  
2 to simulate an emergency such as you describe, actually  
3 ask people to physically get in their cars and come home  
4 and mobilize the emergency workers, the answer is no.

5           If you are asking for something less than that,  
6 I would need some help.

7           Q     Well, I am just asking whether or not FEMA  
8 intends to evaluate in any way whether this phenomenon  
9 would occur and whether or not it would impact the arrival  
10 of emergency workers to their staging areas?

11          A     We will do what evaluation we do during exercises.

12          Q     I understand that. You haven't answered my  
13 question.

14                Isn't it true, you are not going to really  
15 look into what we have just been talking about?

16          A     (Witness Kowieski) First of all --

17          A     (Witness McIntire) In a practical way or a  
18 theoretical way?

19          Q     Either one.

20          A     I think we have already testified -- I have  
21 already testified on the theoretical.

22          Q     Do you intend to explore your theory or are  
23 you just going to let it drop?

24          A     It's on the record.

25          Q     And that is as far as it is going to go, as far

1 as you are concerned, right?

2 A Yes, other than what I have just testified to.

3 Q Mr. Kowieski, we have already gotten and we  
4 all know that some or most of the school busses that  
5 are contracted for or for which they are letters of  
6 agreements have prior commitments to the schools.

7 We all understand that?

8 A (Witness Keller) Letters of intent.

9 Q Whatever they are, there are prior commitments  
10 to the schools?

11 A (Witness Kowieski) That's right.

12 Q Have you attempted to evaluate whether or not  
13 the prior commitments to the schools will impair or  
14 impede the timeliness of the response of getting the  
15 busses to the transfer points?

16 A (Witness Keller) No, we have not, since we  
17 have rated this as being inadequate, an "I," we did not  
18 consider it necessary to go any further unless this  
19 issue, this lack of adequacy is resolved. Okay?

20 Once that is resolved, then we will have to see  
21 how it is resolved. And in the resolution of the fact  
22 that they don't have real letters --

23 A (Witness Kowieski) Contractual.

24 A (Witness Keller) -- letters of agreement, without  
25 these caveats, when that becomes resolved, we will have to

1 look at it again to see if your question is still  
2 valid.

3 Q So you do intend to revisit -- to visit this  
4 question again then, correct?

END 19

5 A Or else it will remain a plan deficiency.  
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1           Q       Just to get things clear, unless you have  
2 evaluated whether or not these prior commitments will impede  
3 the arrival of buses to their transfer points, and until  
4 you have determined that there won't be a negative impact  
5 on the arrival of buses to the transfer points because of  
6 the prior commitments of schools, then the Plan would remain  
7 inadequate in that regard?

8           MR. GLASS: I object to the form. We have, I  
9 think, three negatives in there, and it is a compound question,  
10 and I think it is a little confusing. I am not trying to  
11 hinder you, Mr. McMurray, I just think it is hard for the  
12 witnesses and hard for the record to follow that particular  
13 question.

14           JUDGE LAURENSEN: Sustained as to the form.

15           BY MR. McMURRAY: (Continuing)

16           Q       You just told me, Mr. Keller, that once you do  
17 get the letters of agreement that you have been looking  
18 for, you are then going to look and see whether or not  
19 there is anything in those letters that indicates to you  
20 that the buses aren't going to get to the transfer points  
21 on time, correct?

22           A       (Witness Keller) That would be correct, yes.

23           Q       Okay. And until you do that, you are not  
24 going to be satisfied that the Plan is adequate in that  
25 respect, correct?

1           A       As of this instant, the Plan has a deficiency  
2 in regard to the letters of agreement with the buses.

3           Q       And until you review it with respect to whether  
4 or not those letters of agreement contain any conditions that  
5 might impede the timely arrival of the buses at the transfer  
6 points, that Plan deficiency is going to remain a deficiency,  
7 correct?

8           A       Until we are asked to review a revision, okay?  
9 And assuming that revision has new letters of agreement, which  
10 do not have the prior commitment to use the buses which will  
11 be used for transfer points, et cetera, as school buses,  
12 okay, because we said we didn't like that either --

13          Q       Okay.

14          A       If the new letters of agreement do not have this  
15 prior commitment caveat, the issue is resolved, okay. And  
16 until we see those letters of agreement, we can't testify  
17 any further.

18          Q       Let's say that they do contain the caveat, the  
19 prior commitment.

20          A       I would think that we still say that they were  
21 inadequate.

22          Q       Thank you. Let's see. Mr. Baldwin, on the  
23 bottom of page 30, you said that it should be noted that  
24 procedure OPIP 3.3.3. provides for the early notification  
25 and standby of many emergency workers prior to them being

1 dispatched to their assigned field locations. Do you see  
2 that?

3 A (Witness Baldwin) Yes.

4 Q What is meant by, 'standby?'

5 A The definition of standby is that it -- as it  
6 is in OPIP 3.3.3., on page 2 of 16, it says personnel brought  
7 to standby status with emergency caller responsibilities  
8 shall ready applicable materials and remain close to their  
9 businesses or home telephone in case they are notified to  
10 initiate call out lists.

11 That means to me that they are put on standby  
12 to do the early notification of additional people.

13 Q Now, the fact that they are put on standby doesn't  
14 mean that their travel time between their home and the staging  
15 area is reduced by any amount of time, correct?

16 A That is right.

17 Q Mr. Keller, I think you had a discussion earlier  
18 with Mr. Miller regarding the time sequence between the  
19 activation of the sirens and the activation of the EBS  
20 system. Do you recall that?

21 A (Witness Keller) Yes, I do.

22 Q Okay. Do you recall that your testimony was  
23 that in all cases the siren system was activated prior to the  
24 EBS messages being broadcast?

25 A No, I believe the discussion, and I may be

1 incorrect, I believe the discussion was that Mr. Miller said  
2 that the siren system and the EBS message would be simul-  
3 taneous. I believe what I said was that the requirement  
4 and the Plan statement was that the siren system and the EBS  
5 message should be coordinated, and those two are not the  
6 same.

7 Q Let me then, refer you to OPIP 3.1.1, page 8 of  
8 23.

9 A I am sorry --

10 Q OPIP 3.1.1, page 8 of 23.

11 A Yes.

12 Q You see the box there that says, "Caution."

13 A I see that.

14 Q Do you see where it says the activation of the  
15 prompt notification system must occur simultaneously with  
16 the broadcast of the EBS message.

17 A That is correct. I also, at the time we had  
18 the discussion, and I don't have it now, had another reference  
19 in the Plan which said coordinated.

20 Q Would you agree, then, that there seems to be a  
21 conflict?

22 A Yes.

23 Q Let's go to page 63 gentlemen of your testimony.  
24 Here we are talking about Contention 66, which discusses  
25 basically removal of obstacles and other impediments from

1 the roadways.

2 Mr. Kowieski -- maybe Mr. Baldwin, since you  
3 seem to be the one who has read Appendix A. Whoever.

4 It says, in response to Question 70: That according to the  
5 inventory located in procedure OPIP 3.6.3, 12 tow trucks are  
6 available for removing disabled vehicles from evacuation  
7 routes. Do you see that?

8 A (Witness Baldwin) Yes.

9 Q Okay. And you stated that at least this  
10 particular provision is adequate, correct? I am not talking  
11 about the NUREG 0654 criterion, I am talking about just this  
12 particular item; that is the fact that there are these  
13 tow trucks available.

14 A That is correct. Because on this particular  
15 element, the RAC review report rates J.10.K inadequate,  
16 but we specifically say in the RAC report provisions for  
17 the removal of cars by tow trucks is adequate.

18 Q It appears from your testimony to me, and tell  
19 me if I am wrong, that you are really saying that the concept  
20 of removing obstacles from the roadway by tow truck is  
21 adequate, and not necessarily that 12 tow trucks is adequate,  
22 is that correct, Mr. Baldwin?

23 A Will you restate that, or just reread it?

24 Q Are you saying in your testimony that the fact  
25 that LILCO has 12 tow trucks -- and I am emphasizing 12 --



1 means that you know they have enough tow trucks and you know  
2 that they can remove the impediments from the roadway, or  
3 are you more -- or are you basing your rating of adequacy  
4 on the fact that tow trucks are designated as the means by  
5 which obstacles will be removed from the roadway, and you  
6 like that concept?

7 A We are basing that on the fact that in the Plan  
8 it states that there are tow trucks available, and those  
9 provisions are in the Plan. It is not based on a judgment  
10 of whether 12 is adequate, or the particular location. It  
11 is merely based on the fact that the Plan states in that  
12 procedure that tow trucks exist for that purpose.

13 Q You are not making any judgment then as to  
14 whether or not 12 tow trucks are too many tow trucks, or  
15 too few, correct?

16 A That is correct, because we stated in our  
17 written testimony that there are no specific guidelines  
18 in NUREG 0654 determining the number of tow trucks identified  
19 in the Plan would be adequate.

20 Q Does FEMA intend to evaluate in the future  
21 whether or not 12 tow trucks, and I am concentrating on  
22 the number now -- the number of tow trucks available here,  
23 12, is adequate or whether or not more are required?

24 A (Witness Kowieski) We are not going to -- I don't  
25 think we are going to concentrate on a number. What we are

1 going to do during the exercise, we will test the effective-  
2 ness of the tow trucks. So what we have done during the  
3 exercises for other plans, we introduce what we call surprises;  
4 impediments to evacuation during the exercise, and we  
5 evaluated how effectively, how quickly, tow trucks equipment  
6 was able to get to it, and it was based on the fact that  
7 we actually expected the police officer will be dispatched  
8 to the designated location, that would evaluate simulated  
9 situation, would identify the location of the equipment,  
10 would evaluate the time of arrival, and also would advise  
11 EOC, Emergency Operating Center.

12 In turn, decision-maker and responsible agency  
13 at the Emergency Operations Center, would make proper  
14 decisions as to should they detour the traffic, or wait  
15 until the impediment from evacuation route is removed.

16 So, basically to answer your question this  
17 would be evaluated during the exercise.

18 Q What you are saying would be evaluated would  
19 be whether or not the concept of tow trucks is a good one,  
20 correct?

21 A If the tow truck would be able to get to the  
22 location in a timely fashion. If it would take two hours,  
23 most likely it would be too long.

24 Q You will not be evaluating whether or not 12  
25 tow trucks is enough, correct?

1           A       This could lead to the conclusion -- if the  
2 location of tow trucks are such that it will not allow timely  
3 arrival at the impediment to evacuation, this maybe would  
4 lead us to the conclusion that 12 tow trucks is not enough.

5           Q       Mr. Kowieski, tell me, if there were an evacuation  
6 of the ten mile EPZ and all of the households in the ten mile  
7 EPZ evacuated, how many cars would be involved?

8           A       We can find it in the Plan, but I don't have  
9 an instant recall, sir.

10          Q       You wouldn't know how many vehicle miles would  
11 be traveled then, do you?

12          A       No.

13          Q       If you had that information, would you be able  
14 to figure out how many accidents you would expect -- not  
15 only accidents, but breakdowns, people running out of gas,  
16 all those sorts of impediments; how many of those would  
17 occur during the evacuation.

18          A       (Witness Keller) Given the missing information,  
19 i.e., the number of cars, the statistics on breakdowns per  
20 vehicle mile, et cetera, we could figure it out, yes..

21          A       (Witness McIntire) I am sure, and i think I  
22 have seen them personally, that there are studies available  
23 on just those issues that you have asked, based on actual  
24 evacuations.

25          Q       Does FEMA intend to use all that data to

1 determine whether or not 12 tow trucks is enough to cover  
2 the number of incidents that might occur during an evacuation  
3 of the ten mile EPZ.

4 A That could be one factor as we proceed in this  
5 process. I can't say definitely one way or the other.

6 Q You have no intentions of doing that now,  
7 correct?

8 A We did not do it for this Plan review.

9 Q Have you done it for other Plan reviews?

10 A We have only done it in this one Plan review,  
11 for Shoreham. Are you talking about other sites?

12 A That is right.

13 A (Witness Kowieski) No, sir.

14 Q Okay. Mr. McIntire, you are saying that it might  
15 be done for Shoreham?

16 A I can't rule out anything at this point in time.

17 Q That would help you determine whether or not  
18 12 tow trucks was enough, isn't that right?

19 A It is possible.

20 Q It might be a good thing to do, right?

21 A It is possible.

22 Q Now, Mr. Kowieski, the concept of using tow  
23 trucks is a good one, because tow trucks are types of  
24 vehicles with winches and things like that that can pick up  
25 a car, and move it to an area where it doesn't impede the

1 traffic flow, correct?

2 A (Witness Kowieski) Yes, that is correct.

3 Q Now, are you aware that LILCO has revised its  
4 Plan so that, in fact, it is not relying on 12 tow trucks,  
5 but in fact relying on 12 vehicles, some of which are tow  
6 trucks?

7 A I am not aware of it.

8 Q Are you aware of that, Mr. Baldwin?

9 A (Witness Baldwin) No, I am not.

10 Q Are you, Mr. McIntire?

11 A (Witness McIntire) No.

12 Q Mr. Keller?

13 A (Witness Keller) No.

14 Q If this were the case, do you believe that you  
15 would have to go back and review that particular portion of  
16 the Plan to determine whether or not the 12 vehicles provided  
17 for can, in fact, perform the functions that are required  
18 by J.10.K?

19 A (Witness Kowieski) No, sir.

20 Q Do you think if 12 Volkswagens were assigned to  
21 this task, that that would be adequate?

22 A If I would see a Volkswagen during the exercise  
23 trying to remove the car or oil truck, I would question it.

24 Q Do you know how many different types of vehicles  
25 LILCO holds out as performing the task of removing obstacles

1 from the roadway?

2 A LILCO Transition Plan, Revision 3, identified  
3 12, and it identifies also in addition some fuel distribution  
4 locations.

5 Q Obviously my question wasn't clear.

6 A Well, I understand at one point you combined  
7 the two, some of the cars can run out of gas.

8 Q It is clear my question wasn't clear. Let  
9 me start back from the beginning. The Plan says 12 tow  
10 trucks, right?

11 A That is correct.

12 Q I am not asking you to assume for me that the  
13 Plan has now been revised so that an array of vehicles,  
14 different types of vehicles now take the place of those  
15 12 tow trucks. Have we got that?

16 A That is correct.

17 Q Now, do you believe it is necessary to review  
18 the Plan again to determine whether or not the assignment  
19 of those 12 vehicles to the task of removing obstacles of  
20 the roadway is adequate?

21 A No, unless if in the new revision if I would  
22 see that instead of 12 tow trucks, that LILCO would intend  
23 to use what you cited, Volkswagens.

24

#21-1-SueT

1           A       (Witness McIntire) But I think we can state  
2 categorically, any revisions to Revision 3 that were sub-  
3 mitted to us formally will be reviewed.

4           Q       So that you would review this item again for  
5 adequacy if it has been revised, correct?

6           A       Yes.

7           Q       Just to make this clear, any subsequent review  
8 that would not be only on the thirty-two deficiencies but  
9 would go to any revision that you saw or were aware of,  
10 and it -- isn't that true, Mr. Keller?

11          A       (Witness Keller) That is correct.

12                   (Witness Kowieski) That's correct.

13          Q       Okay.

14          A       (Witness Baldwin) Yes, that's correct. And  
15 in other situations we have gone back in other plans and  
16 found where things don't get better, they get worse in  
17 terms of emergency planning.

18          Q       So a revision could actually cause you to go  
19 from an adequate to an inadequate rating, correct?

20          A       (Witness Kowieski) Hypothetical, that's  
21 quite possible.

22          Q       Does LILCO intend to test whether each one of  
23 the different types of vehicles assigned to the task of  
24 removing obstacles is adequate for performing that task?

25          A       (Witness McIntire) I don't know what LILCO's

#22-2-SueT 1

plans are regarding that matter.

2 Q Substitute FEMA for that.

3 A Not at this time, and probably not.

4 Q When you rated J.10.K as being adequate, Mr.  
5 Kcwieski, were you assuming that all twelve of the vehicles  
6 would be immediately available for deployment?

7 A (Witness Kowieski) That would be available  
8 for deployment. When you say immediately, I don't --

9 Q Immediately available?

10 A Yes. I assume so.

11 Q You assume that, but you didn't know, correct?

12 A I assumed that vehicles specified, the tow  
13 trucks specified, in the plan would be available during  
14 the emergency to deal with impediments to evacuation.

15 Q Have you looked into where the twelve vehicles  
16 are normally stationed?

17 A I have not.

18 Q Have you looked into how long it would take  
19 to get the tow trucks from -- or vehicles because it is  
20 no longer all tow trucks -- their normal garages to their  
21 places of deployment?

22 A We have not evaluated this.

23 Q Now, the plan itself does set out the various  
24 deployment locations; isn't that correct, Mr. Kowieski?

25 A When you are saying the various deployment



#11-3-SueT 1

locations for --

2 Q For the vehicles that are supposed to remove  
3 obstacles from the roadway.

4 A If you allow me, we will verify in the plan.

5 Q Appendix A is the better volume to look in.  
6 But it might be in the procedures.

7 (The witnesses are going through documents and  
8 conferring.)

9 Q (Continuing) Okay. Isn't it true that OPIP  
10 3.6.3, Attachment 7, sets out -- Attachment 8 sets out  
11 road crew deployment locations?

12 A (Witness McIntire) Yes, that's correct.

13 Q The road crews are the ones who are going to  
14 operate the tow trucks and other vehicles, correct?

15 A That's right.

16 Q Have you evaluated these locations to determine  
17 whether or not they make sense to you?

18 A Could you define "make sense," please?

19 Q Whether they are appropriate locations for  
20 deploying the trucks, the tow trucks?

21 A (Witness Baldwin) Well, let me be specific  
22 about what we have not done. We have not correlated these  
23 road crew deployment locations in Attachment 8 on Pages 1  
24 and 2 with the storage locations for the road crew, Volk  
25 vehicles, in Attachment 12. And there is only one page of

#A2-4-SueT

1 that.

2 Q Okay.

3 A We have not correlated that.

4 Q Okay. Thank you for telling me that. That  
5 wasn't specifically what I was going for.6 Have you determined whether or not, once the  
7 trucks get to these deployment locations and are scattered  
8 wherever they are in the EPZ, whether or not those are the  
9 appropriate places for them to be deployed?

10 (The witnesses are nodding in the negative.)

11 Q (Continuing) Everybody is shaking their heads.

12 A (Witness Kowieski) No, we have not.

13 Q You have not? Thank you.

14 You are aware I believe that the LILCO plan at  
15 least calls for distribution of fuel to evacuating motorists;  
16 isn't that correct?

17 A That's correct.

18 Q Again, the deployment locations for the fuel  
19 trucks are in that same OPIP; isn't that true, Mr. Baldwin?

20 A That's correct.

21 Q Okay. Mr. Kowieski says that's correct.

22 A (Witness Baldwin) That's correct.

23 Q Have you evaluated whether or not those deploy-  
24 ment locations are appropriate?

25 A (Witness Kowieski) We have not.

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2 Q Okay. Have you looked at any of the particular  
3 sites to determine whether or not they can -- they are  
4 appropriate for handling the particular function?

5 A Appropriate in terms of what?

6 Q Well, have you evaluated them to determine  
7 whether or not they are in areas where a queue might form  
8 that could impede the evacuation?

9 A No, we have not evaluated that.

10 Q Do you intend to?

11 A It's possible during the exercise some of the  
12 locations will be evaluated.

13 Q And how evaluated? For what will you be looking  
14 for?

15 A Again, it's -- they are proper in terms that  
16 the access, the location and relationship to the evacuation  
17 route.

18 Q And until you evaluate them you won't be able  
19 to say that the LILCO plan is adequate, correct, in that  
20 respect?

21 A (Witness McIntire) Now, we are getting back  
22 again to an evaluation question against the plan review  
23 question.

24 We have made a judgment on plan review.

25 Q And until you evaluate those transfer -- or,  
those fuel distribution locations, you won't be able to

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1 say that they are adequate, correct?

2 A From a planning perspective or a preparedness  
3 perspective?

4 Q Why don't you give me the answer to both?

5 A We have, at this point in time, made a judgment  
6 on the planning perspective. Then, we will look at the  
7 implementability of the plan during an exercise and,  
8 therefore, we might have a different finding.

9 (Witness Kowieski) If I can just add --

10 Q Excuse me. Just a second. Until you evaluate  
11 those fuel deployment locations --

12 MR. GLASS: Mr. Miller, I thought our ground  
13 rules were that if another witness wanted to supplement  
14 an answer, he would be given an opportunity before the  
15 attorneys went on.

16 Mr. Kowieski indicated his intent to supplement  
17 Mr. McIntire's answer.

18 JUDGE LAURENSEN: That is correct.

19 BY MR. MC MURRAY: (Continuing)

20 Q Mr. Kowieski, I'm sorry for interrupting you.  
21 And, my name is Mr. McMurray.

22 MR. GLASS: I'm sorry.

23 WITNESS KOWIESKI: With regard to the planning  
24 aspects, just maybe as a reminder, the NUREG 0654 planning  
25 criteria, J.10.K, states that it would require identification

#21-7-SueT 1

2 of and means for dealing with potential impediments to use  
3 over evacuation routes in contingency measures.

4 There is no requirement that we actually will  
5 go and count number of trucks, or will perform some kind  
6 of analysis or evaluate the location during the plan review  
7 process.

8 BY MR. MILLER: (Continuing)

9 Q Well, Mr. Kowieski, when they use the term  
10 "means" for dealing with potential impediments, they mean --  
11 they don't just mean any means. They mean adequate means,  
12 correct?

13 A Means that means have been identified. The  
14 provisions have been made in the plan.

15 Q They are two different things. Identification  
16 of and means for. Correct?

17 A (Witness McIntire) But it doesn't say adequate.  
18 You injected that.

19 Q Are you telling me that when the term "means"  
20 is used there is no implication that the means should be  
21 adequate; that is not implied anywhere in NUREG 0654?

22 A That could be an implication, yes.

23 Q Okay. And also there could be the implication,  
24 or should be the implication, that the means are reliable;  
25 isn't that correct?

A That could be correct also.

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Q Well, you are saying not necessarily?

2

A I was --

3

Q You are telling me that the term "means" could be interpreted to be just any old means and not one that is adequate or reliable?

4

5

A No, that's not what I'm saying at all.

6

7

Q Okay. In other words, when the term "means" is used, the underlying implication is that those means be adequate and reliable, correct?

8

9

A To be implementable. It would work.

10

11

Q It would work. Now, using that definition, Mr. Kowieski, what have you done to determine whether or not the fuel deployment locations would work?

12

13

A This is again what we do during exercises.

14

15

Q They are talking here about a planning criteria.

16

A The plans --

17

18

Q You just said that "means" means implementable means. And now I'm trying to find out how this planning criterion was met in the LILCO plan.

19

20

A (Witness Baldwin) What we have done at this point is, we have checked in the plan to see whether the plan contains an identification of means for dealing with.

21

22

We have not checked the "and means" part.

23

24

Q So really then until that is checked, J.10.K will not have been fully evaluated, correct?

25

#21-9-SueT 1

2 A Yes. And we have testified on a number of  
3 things today that we would have to await and exercise in  
4 order to do that.

5 Q So, what you are saying then is that, just so  
6 I am perfectly clear on this, is that the means have  
7 been identified but the adequate rating doesn't mean that  
8 those means are necessarily implementable?

9 A (Witness Keller) J.10.K was not evaluated as  
10 being adequate.

11 Q The tow truck portion was.

12 A That's right. But there was nothing about the  
13 gas. We were talking about the gasoline and whether or  
14 not the positions for the dispensation of the gas was  
15 adequate and reliable.

16 My only statement is that the removal of cars  
17 by tow trucks is adequate.

18 Q Okay. Mr. Keller, you are absolutely right.  
19 And I want to know then what your opinion is of the fuel  
20 allocation system, whether or not that is adequate under  
21 J.10.K?

22 A (The witnesses are conferring.)

23 While you might consider that vehicles could  
24 run out of gas and, therefore, become an impediment to  
25 evacuation, you could either remove this car which has  
run out of gas by a tow truck, which we have evaluated

#21-10-SueT 1

2 adequate, and that would end the issue. This plan has gone,  
3 if you will, one step further. It has placed in the plan a  
4 concept where they would try to eliminate the possibility  
5 of as many cars running out of gas.

6 There is no specific requirement that I am  
7 aware of that a plan have the provision to supply gas along  
8 the evacuation routes. This is in this plan, an extra, if  
9 you will.

10 And we have not gone further than to identify  
11 the fact that this is in the plan, it will be looked at  
12 as in the implementability of the plan in an exercise.

13 Q Have you done any calculations to determine  
14 how many cars could run out of gas during an evacuation of  
15 the ten mile EPZ?

16 A I have not.

17 Q Have you done any calculations to determine  
18 whether or not twelve tow trucks would be adequate to  
19 handle the removal of those vehicles from the roadway?

20 A I believe Mr. Baldwin testified somewhat earlier  
21 that our evaluation of the tow truck adequacy for removal  
22 of cars was not based on the number twelve, as you emphasize,  
23 in the plan review. It was based on the fact that there  
24 were tow trucks.

25 Q Let me ask you again, and you can answer this  
question yes or no. Have you done any calculations to



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1 determine whether or not twelve tow trucks would be suitable  
2 or enough to remove the expected number of cars who run out  
3 of gas from the roadway?

4 A No.

5 (Witness McIntire) Nor is that a requirement.

6 Q The plan was considered inadequate because it  
7 didn't have procedures on snow removal; isn't that correct,  
8 Mr. Kowieski?

9 A (Witness Kowieski) That's correct.

10 Q And until those procedures appear, the plan will  
11 remain inadequate in that respect; isn't that correct?

12 A (Witness Kelley) Not necessarily.

13 (Witness Baldwin) Not necessarily. What we  
14 say in the RAC review is that there are provisions for the  
15 removal of snow. And it says in there that during severe  
16 snow or ice storm, the plan recommends selective shelter-  
17 ing.

18 It also establishes that if snow removal services  
19 are needed, those would be provided by local organizations  
20 in their normal fashion. That is what the plan states.

21 In the plan review the RAC did, we have made  
22 specific reference to the fact that it is -- we have  
23 suggested that additional pre-emergency planning be done  
24 to assure -- to insure that snow removal on evacuation routes  
25 would be done to coincide with the evacuation scheme that

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2 is in process. In other words, that the evacuation routes  
3 would be plowed.

4 Q And until there are these SOPs or whatever you  
5 want in the plan, the plan is going to remain inadequate  
6 with regard to that element, correct?

7 A As I understand it, until we get clarification  
8 of two things, the provisions for snow removal by local  
9 organizations in their normal fashion. We need that to  
10 be clarified. And also the SOPs which would detail the --  
11 not detail --

12 Q The coordination of those?

13 A But it would specify a coordination that the  
14 evacuation routes would be plowed and instructions would  
15 be given by the Director of Local Response or the Manager  
16 of Local Response.

17 Q Thank you. Let me refer you to Page 66 of your  
18 testimony. This deals with the provision for buses for  
19 the transit dependent population, correct, gentlemen?

20 A (Witness Keller) That is correct.

21 Q Okay. You mention the number of three hundred  
22 and thirty-three forty passenger buses. Have you deter-  
23 mined whether or not three hundred and thirty-three buses  
24 is an adequate number for evacuating the transit dependent  
25 population in the EPZ?

A (Witness Kowieski) We did perform a rough  
calculation.

end #21

1 Q You did perform a rough calculation. What was  
2 that?

3 A That 333 busses would be sufficient to evacuate  
4 the transit-dependent population.

5 Q What was your calculation? Would you explain it?

6 A We took 9 percent of --

7 A (Witness Keller) My recollection is, we took the  
8 numbers in the plan, which are purported to be the numbers  
9 of transit-dependent population who require evacuation  
10 busses, divided by the 47 -- I am sorry. Divided by  
11 40 the number of passengers per bus. We came to a number  
12 very close to 333 which is the number the plan says.

13 Q By taking the numbers in the plan and by  
14 dividing by 40, you came up with a number close to 333?

15 A That is correct, yes.

16 Q So you took at face value the numbers in the  
17 plan?

18 A Absolutely.

19 Q You didn't look at census data or other data  
20 to determine whether or not those numbers were accurate?

21 A That is correct.

22 Q You took the figure of 40 because these are 40-  
23 passenger busses, correct?

24 A Correct.

25 Q Therefore, you were assuming that each bus would

1 be completely full when used, correct?

2 A Correct.

3 A (Witness Kowieski) However, the 9 percent  
4 cited in the plan is based on two studies performed by  
5 two individuals. This applies to seasonable population.

6 Q Seasonal? Meaning summer population, Mr. Kowieski?

7 A That is correct. But I think I misspoke. I  
8 misspoke. Again, I plan to reference 9 percent of  
9 seasonal population as it applies to reception centers.  
10 It does not apply to transit-dependent population. I  
11 apologize.

12 Q Okay.

13 JUDGE LAURENSEN: It is now 6:00 o'clock. I  
14 think this is about time to terminate the questioning  
15 of witnesses because we do have several decisions to  
16 announce and some other matters to take up at this point.

17 The way we will proceed -- the witness panel  
18 is excused. You may leave at this time.

19 (The witnesses stood down.)

20 JUDGE LAURENSEN: The way we will proceed  
21 is that we will announce the Board's decision on the county's  
22 motion to admit supplemental testimony, followed by our  
23 decision on the LILCO motion for additional time.

24 Thereafter, we will quickly review the line up  
25 and the schedule for tomorrow and for next Tuesday.

1           At this time, the Board's decision on the  
2 county's motion to admit supplemental testimony will be  
3 presented by Dr. Kline.

4           JUDGE KLIKE: We consider at this time  
5 Suffolk County motion, dated July 6, 1984, to admit  
6 the supplemental testimony of Deputy Inspector Cosgrove  
7 and Lieutenant John L. Fackler on behalf of Suffolk County  
8 regarding contentions 39, 40, 41, 44, 98, 99, and 100.

9           That motion was accompanied by the proffered  
10 testimony.

11           LILCO replied in writing to this motion on  
12 July 11, while we were at hearing.

13           In support of its motion, the county argues  
14 that the motion meets the good cause requirements for  
15 admitting supplemental testimony and that the parties  
16 would not be prejudiced by its admission since there will  
17 be opportunity to cross-examine the county's witnesses.

18           Briefly, the county asserts that the testimony  
19 is relevant because it is based on training critiques  
20 which this Board has previously found to be relevant.  
21 It is not cumulative since the county was previously barred  
22 from presenting this data during cross-examination of  
23 LILCO witnesses, and it was incapable of being filed  
24 earlier because the critique forms only recently became  
25 available, and only since the end of trial in mid-June has

1 there been time to review and analyze the data.

2 LILCO in its reply argues that this testimony  
3 is not admissible for three reasons. One, it is contrary  
4 to the Board's order. Two, it is not admissible within  
5 the meaning of 10 CFR 2.743(c). And three, it fails to  
6 meet the standards for the submission of supplemental  
7 testimony.

8 LILCO asserts that the testimony is contrary  
9 to the Board's previous order on this subject because  
10 they believe that the Board ordered that the county must  
11 establish a pattern through statistical analysis of  
12 all critique forms. Since the proffered testimony does  
13 not purport to embody a statistical analysis, LILCO  
14 believes that it does not meet the substance of the Board's  
15 order.

16 LILCO characterizes this testimony as  
17 simply a stringing together of selected quotations from  
18 a selected set of critique forms. The appended critique  
19 forms are asserted to be virtually identical to the  
20 exhibits that the county placed in the record in its offer  
21 of proffer.

22 LILCO further asserts that this testimony does  
23 not meet the requirements of 10 CFR 2.743(c), which  
24 requires that only relevant, material and reliable evidence  
25 which is not unduly repetitious will be admitted.

1           In support of its view, LILCO attacks primarily  
2 the reliability aspects of the testimony. They quote from  
3 the Board's earlier observation on this subject that an  
4 isolated selection of comments by individual observers  
5 presents a biased record that is of no decisional value  
6 to the Board.

7           They assert further that the Board has previously  
8 found this data to be unreliable by quoting from the  
9 Board's previous order where the Board stated, "Valid  
10 hypotheses cannot be generated by the obviously flawed  
11 methodology employed by the county in this instance."

12           LILCO asserts further that the testimony does  
13 not meet the requirements for submission of supplemental  
14 testimony. They assert that the county fails to meet  
15 the relevance test of these standards because the testimony  
16 is not probative for the reasons previously stated.

17           The Board disagrees with LILCO that admission  
18 of this testimony would be contrary to our prior order  
19 denying admission of this or similar data as a county  
20 exhibit. To be sure, the Board did order that to be  
21 admissible, the county would have to show some form of  
22 pattern in the data. We sought by this to obtain  
23 reasoned analysis of the data and to avoid burdening the  
24 record with reams of raw, undigested data of no probative  
25 value.

1           It did not, however, order that only a  
2 statistical analysis would suffice to show such a pattern.  
3 If it was not clear before, we make clear now that our  
4 previous bar to admission of the county exhibit had nothing  
5 to do with the merits of what the county was trying to  
6 show. The Board's perception that the county's exhibit  
7 lacked reliability or probative value was based on a  
8 methodology of data analysis so flawed as to be immediately  
9 obvious even to a layman, that no meaningful hypothesis  
10 could be generated or confirmed by it.

11           Our allusion to statistics, however, was  
12 illustrative, not prescriptive, as to the method of  
13 analysis to be used. We insisted then and insist now  
14 that data analyses be unbiased within the statistical  
15 meaning of that term.

16           This is not a requirement for a complete  
17 statistical analysis of the data. Our statement is nothing  
18 more than an elementary threshold requirement without  
19 which no analysis could be valid.

20           To put it in the most elementary possible terms,  
21 we do not accept that a valid hypothesis can be confirmed  
22 from a voluminous data set simply by extracting a subset  
23 of data that agrees with that hypothesis. The reason is  
24 equally elementary and obvious. A biased data base  
25 does not permit any technically valid inference to be drawn



1 about the training program.

2 Although we did not accept the exhibit of the  
3 county because of flawed methodology, we did not think it  
4 necessary or appropriate to tutor the parties as to what  
5 an acceptable methodology might be. All active parties  
6 in this case have expert witnesses who could advise, in  
7 a matter of minutes, how the flawed methodology might  
8 be remedied.

9 We allowed for the possibility in our order,  
10 however, that it might be possible to establish a  
11 pattern by subjective methods. We offered no opinion in  
12 our previous ruling, nor do we now, as to whether some  
13 hypothesis adverse to LILCO might lie latent in the overall  
14 set of critique forms waiting only to be extracted by  
15 proper methods or reasoned analysis.

16 The county apparently correctly perceived that  
17 a reasoned, subjective evaluation of the data might  
18 suffice to establish a pattern in the LILCO training program.  
19 They now present us with supplemental testimony, sponsored  
20 by experts in police training who assert that they have  
21 examined the documents and who profess to have discovered  
22 patterns of impropriety in the LILCO training program.

23 Under these changed circumstances, the Board  
24 does not know how thoroughly these witnesses have  
25 evaluated the data sets, nor does it know whether their

1 analysis and inferences rest on bedrock or quicksand.  
2 These are matters, however, which can be brought out on  
3 cross-examination.

4 The principal basis for our previous denial  
5 of the county exhibit rested on serious doubts about its  
6 reliability or probativity.

7 The sponsorship of this testimony by experts,  
8 who claim to have studied the documents, now allows for  
9 the possibility that one or more valid patterns might  
10 have been discovered.

11 We agree with the county that the testimony is  
12 relevant, material, timely, and not cumulative. We remain  
13 extremely skeptical about its reliability or probative  
14 value, based on reasoning we have previously articulated.

15 However, fairness and impartiality dictate  
16 that experts, who purport to have examined the data, now  
17 be heard.

18 We, therefore, conclude that the county has  
19 made a bare minimum threshold showing that this testimony  
20 should be admitted, and it is so ordered.

21 Our order, however, is limited to the written  
22 testimony of witnesses Cosgrove and Fackler contained  
23 on pages 1 through page 21. We do not admit any of the  
24 attached exhibits which consist of nor more than raw  
25 data sets having the same flaws we previously barred from

1 admission. All references to the attachment numbers in  
2 this testimony are ordered deleted.

3 That completes the ruling.

4 JUDGE LAURENSEN: Thank you, Dr. Kline.

5 We have before us LILCO's motion for  
6 additional time for discovery and to file a motion to  
7 strike Suffolk County's revised testimony on contention 75,  
8 the relocation centers.

9 Suffolk County, New York, and the NRC Staff  
10 presented oral arguments concerning their position on  
11 LILCO's motion. The county and the state opposed it.  
12 The NRC Staff supported it, at least to the extent of  
13 not opposing it.

14 By way of background, we gave LILCO until last  
15 Friday, July 6, to file its motion to strike the county's  
16 relocation center revised testimony on contention 75.  
17 The county's revisions to the testimonies of Drs. Harris  
18 and Mayer had been filed on Tuesday, June 26.  
19 LILCO waited for ten days thereafter before filing the  
20 instant motion.

21 LILCO claims that it has insufficient bases  
22 for filing motions to strike or for filing supplemental  
23 testimony, unless it is allowed to conduct further  
24 discovery. LILCO wants to take the depositions of  
25 James Hines, the District Superintendent of BOCES 2, and

1 Frank A. Cipriani, President of the State University of  
2 New York at Farmingdale.

3 It lists five specific areas for interrogation  
4 of these witnesses concerning the letters of June 21, 1984,  
5 addressed to the Red Cross and attached to the county's  
6 revised testimony.

7 For example, LILCO wants to inquire into the  
8 precise time the witnesses learned that their facilities  
9 were being relied on in the LILCO plan, who told them that  
10 fact, their prior knowledge of such facts, their  
11 understanding of the agreements with the Red Cross, and  
12 the timing of the notification of the Red Cross.

13 Suffolk County and New York object to the request  
14 because it is untimely and it fails to establish good  
15 cause.

16 We agree with these two reasons and we deny  
17 LILCO's motion.

18 First, LILCO did not act in a timely fashion  
19 after receiving the county's revised testimony on June 26.  
20 That testimony consists of only one page and the two  
21 one-page letters of the heads of SUNY Farmingdale and  
22 BOCES 2.

23 Second, the areas identified for interrogation  
24 on the discovery proposed by LILCO do not appear to us  
25 to be likely to yield relevant evidence on the

1 availability of the two sites for use as relocation  
2 centers.

3 Therefore, LILCO has failed to establish  
4 good cause for a grant of additional time. When LILCO  
5 elected last Friday to seek additional time and not to  
6 file a motion to strike, it did so at its peril.

7 LILCO's request for additional time to file  
8 such a motion to strike is denied. However, to the  
9 extent that the LILCO motion questions the foundation  
10 for the two letters attached to the county's testimony,  
11 we will treat the LILCO motion as a motion to strike those  
12 two letters.

13 Pursuant to our usual practice, we will not  
14 rule on motions to strike until we arrive at that  
15 testimony. Under the present schedule agreed to by all  
16 parties earlier today, that subject will not be reached  
17 until after the second session of the FEMA testimony,  
18 during the week of August 14.

19 Moreover, since the only item of testimony to  
20 be heard after that time will be the testimony on the  
21 public information brochure, we will not entertain any  
22 subsequent motions for supplemental testimony.

23 If LILCO intends to change, revise, supplement,  
24 or in any way alter its testimony on relocation centers,  
25 such testimony must be filed on or before July 31, 1984, or

1 it must meet our test for admission as rebuttal testimony.

2 Insofar as LILCO wishes to challenge the  
3 letters from SUNY Farmingdale and BOCES 2, concerning  
4 their availability to the Red Cross under the LILCO plan  
5 in the event of an accident at Shoreham, we will entertain  
6 requests from LILCO to subpoena Superintendent Hines  
7 and President Cipriani.

8 To put this in perspective, we are making this  
9 ruling because the parties are unable to agree on the  
10 disposition of this matter. However, to the extent that  
11 the parties wish to substitute an agreed-upon alternate  
12 procedure for discovery, establishing a foundation for  
13 the admission of the two letters, or for filing supplemental,  
14 revised, amended, or rebuttal testimony, they may do so  
15 with the approval of the Board.

16 To recap our ruling here, it is as follows and  
17 there are five parts:

18 First, LILCO's motion for additional time is  
19 denied.

20 Two, LILCO's objection to the foundation for  
21 attachments 2 and 3 -- that is, the letters from  
22 Superintendent Hines and President Cipriani to the  
23 American Red Cross, dated June 21, 1984 -- will be treated  
24 as a motion to strike those two attachments. And a ruling  
25 on that motion to strike will be deferred until we reach

END 22

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the subject of the relocation center testimony later  
during this hearing.

#23-1-Wal

1                   Number three. If LILCO wishes to challenge the  
2 foundation for the two letters referred to above, the Board  
3 will entertain a request for subpoenas for the authors of  
4 those letters.

5                   Four. Because the subject of relocation centers  
6 will be among the last subjects of this hearing, we will  
7 not permit the filing of supplemental testimony after that  
8 time. If any party wishes to amend, revise or supplement  
9 its testimony on this subject, it must do so on or before  
10 July 31st, 1984.

11                   Fifth, and finally. All of the above four rulings  
12 are subject to the proviso that the parties may arrive at a  
13 different agreement with the approval of the Board.

14                   This completes our ruling on the LILCO motion  
15 for additional time.

16                   The final matter that I listed for this after-  
17 noon was a brief review of tomorrow's schedule. We will  
18 begin at 9 a.m., and we will then hear the oral argument on  
19 the LILCO motions to admit supplemental testimony on  
20 Contention 85 and revised testimony on Contention 88. We  
21 expect to rule on those motions tomorrow.

22                   Thereafter, Suffolk County will have approximately  
23 one hour to complete its cross-examination of the FEMA  
24 panel, pursuant to our Order allocating two days.

25                   At this time, I would call upon the remaining



#23-2-Wal

1 to give us a current estimate of the time they expect to  
2 take with the FEMA panel.

3 Mr. Zahnleuter, do you have a revised estimate,  
4 or a current estimate?

5 MR. ZAHNLEUTER: My estimate would be about one  
6 and a half hours.

7 JUDGE LAURENSEN: Ms. McCleskey?

8 MS. MC CLESKEY: I believe I will take one and  
9 a half hours.

10 JUDGE LAURENSEN: And, Mr. Glass, do you have an  
11 estimate on redirect?

12 MR. GLASS: Probably half an hour.

13 JUDGE LAURENSEN: All right. The final item  
14 that I have is that the cross-examination plans on the  
15 Cluster 17 testimony, LILCO testimony on 24.R, LILCO  
16 testimony on 33 and 49, and the County's supplemental  
17 training testimony will be due when we reconvene here next  
18 Tuesday, July 17th at approximately 10 a.m.

19 Are there any other procedural matters that we  
20 should take up this afternoon or this evening?

21 MR. MILLER: Judge Laurenson, two matters I  
22 think. Cluster 17, the contentions you just listed, does  
23 that take into account the changes in the schedule of the  
24 contentions proposed earlier this morning?

25 JUDGE LAURENSEN: Cluster 17 is the original

#23-3-Wal

1 listing of the April 11, 1984 Suffolk County/LILCO proposal  
2 for order of litigation of Group II-B. Cluster 17 has  
3 in them all of the items that were listed this morning.  
4 I didn't say that right.

5 Cluster 17 contains the items that we are  
6 likely to reach either next week or early the week there-  
7 after based upon the prior estimates that we have concern-  
8 ing the cross-examination of the County's training testimony.

9 MR. MC MURRAY: Judge Laurenson, I guess our  
10 confusion is that that doesn't seem to follow the order  
11 that was agreed upon this morning.

12 If I understand correctly -- maybe you could help  
13 me out. After the training testimony comes LILCO 81 and  
14 then 24.R and then 77, and those two might be switched.

15 JUDGE LAURENSON: That's all 17. That's all  
16 Cluster 17.

17 MR. MC MURRAY: Okay. I'm sorry. We thought  
18 you were calling these Contentions 24.R, 33 and 49 Cluster  
19 17.

20 JUDGE LAURENSON: No.

21 MR. MC MURRAY: I'm sorry.

22 JUDGE LAURENSON: I said Cluster 17 and then I  
23 listed the additional ones besides that.

24 MR. MILLER: Judge Laurenson, are you saying  
25 that you want cross plans by next Tuesday on all remaining

#23-4-Wal

1 issues?

2 JUDGE LAUREN<sup>SON</sup>: I didn't list the relocation  
3 centers or the brochure. But I guess aside from that it  
4 looks like everything else, because I think we don't have  
5 many days left of testimony.

6 MR. MILLER: Judge Laurenson, we have always had  
7 an agreement before regarding trying to get cross plans  
8 three business days before. And frankly some of these  
9 contentions, at least it would be my opinion, would not  
10 possibly come up within the first three days of next week's  
11 schedule.

12 And I would, therefore, request the Board to  
13 defer to our previous method of turning in cross plans,  
14 only because that requires a whole lot of cross-examination  
15 plans to be drafted between now and Monday.

16 JUDGE LAUREN<sup>SON</sup>: Well, how many do you expect  
17 to reach next week? I guess that's a fair question.

18 MR. MILLER: I would think that next week, the --  
19 first of all, I have a clarification question. I assume  
20 that the LILCO cross-examination of the Suffolk County  
21 training witnesses will include the supplemental testimony.  
22 So, I'm assuming I guess that the estimate that has been  
23 provided by LILCO regarding cross-examination of training  
24 may be extended somewhat.

25 JUDGE LAUREN<sup>SON</sup>: The estimate is a day and a

#23-5-Wal

1 half to two days, I believe. At least, that's the current  
2 estimate.

3 MS. MC CLESKEY: That's right. I think the  
4 County had asked more recently, and I inquired, and I  
5 believe our high estimate was down to a day and a half  
6 or less.

7 MR. MILLER: Does that include that supplemental  
8 testimony?

9 MS. MC CLESKEY: No, it did not.

10 MR. MILLER: If we assume, Judge Laurenson, and  
11 I think it's a very conservative assumption, that all the  
12 parties would spend two days on the Suffolk County training  
13 testimony, so we would complete that at the end of Wednesday  
14 of next week, I would think that it's likely that at the  
15 very most next week we would complete Contentions 81, 77,  
16 maybe 24.R. 81 is a fairly substantial contention in  
17 terms of the number of pages of testimony filed by LILCO.  
18 We maybe, I guess, could possibly get into 33 or 49, but  
19 I would not think that would be that likely.

20 We certainly would not get to Contentions 85 or  
21 88, for example, which I would think for sure now would be  
22 some time during the third week.

23 JUDGE LAURENSON: Is there agreement on that  
24 estimate?

25 MS. MC CLESKEY: Mr. Miller, are you saying that

#23-6-Wal

1 you think LILCO 81 will be one day?

2 MR. MILLER: I guess what I'm saying is that  
3 LILCO 81, LILCO 77 and let's throw in LILCO 24.R, cross-  
4 examination by all the parties, redirect, et cetera, I  
5 think would probably take, assume we spend two days on  
6 training, the rest of the week.

7 MS. MC CLESKEY: Well, I am loathe to assume  
8 we are going to spend two days on training because I'm  
9 not familiar with that issue, and I think a day to a day  
10 and a half is still probably an accurate estimate.

11 MR. MILLER: Yes, but --

12 MS. MC CLESKEY: But in any event --

13 MR. MILLER: -- I'm including all the parties.  
14 I'm not just talking about LILCO for training. I'm saying,  
15 let's assume two days for all the parties in training. I  
16 think that is reasonable if LILCO is estimating a day to a  
17 day and a half for its cross-examination.

18 MS. MC CLESKEY: In any event, I think it's  
19 unlikely that we would get to LILCO 85 by Friday.

20 JUDGE LAURENSEN: Why don't we draw the line  
21 there, then. And we will draw the line after the DOE  
22 testimony. It will be LILCO 33 and LILCO 49. And, of  
23 course, we have to hear and decide the 85 and 88 questions  
24 tomorrow anyway.

25 MR. MILLER: Judge Laurenson --

#23-7-wal 1

JUDGE LAURENSEN: Then, that would leave 85,  
2 88 alone for the next week. Is that right?

3 MR. MILLER: If we assume that we cover it all,  
4 cover all these other issues in one week's time, which I  
5 think is unlikely.

6 JUDGE LAURENSEN: Oh, we might.

7 MR. MILLER: Judge Laurenson, let me make sure  
8 I understand. By next Tuesday, cross plans then will be  
9 due on LILCO 77, LILCO 81, LILCO 24.R, LILCO 33, LILCO 49  
10 and the Suffolk County supplemental training testimony?

11 JUDGE LAURENSEN: We already have one on 92  
12 I believe. Didn't you file one on 92 previously?

13 MR. MC MURRAY: No, Judge Laurenson, we didn't.  
14 Maybe weeks ago.

15 JUDGE LAURENSEN: Months ago.

16 MR. MC MURRAY: Months ago? I guess you are  
17 right.

18 JUDGE LAURENSEN: I think 77 also got dropped  
19 out after a cross examination plan may have been filed.

20 MR. MILLER: Oh, you think we have filed our --

21 (Laughter.)

22 You can tell we really are on the issues here.

23 JUDGE LAURENSEN: We will go back and check the  
24 files on it. Okay. But, yeah, I think that summary is  
25 correct, with the understanding now that based upon the

#23-8-Wal 1

2 agreement that was put in the record earlier this morning  
3 of the issues that will be heard this month, the only ones  
4 where we are not requiring cross-examination plans to be  
5 filed are 85 and 88.

6 Anything further this evening? We are adjourned  
7 until 9 a.m.

8 (Whereupon, at 6:30 p.m., the hearing was  
9 adjourned, to reconvene at 9:00 a.m., Friday, July  
10 13, 1984.)

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CERTIFICATE OF PROCEEDINGS

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

In the matter of: LONG ISLAND LIGHTING COMPANY

Date of Proceeding: Thursday, July 12, 1984

Place of Proceeding: Hauppauge, New York

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

Garrett J. Walsh, Jr.  
Official Reporter - Typed

*Garrett J. Walsh, Jr.*  
Official Reporter - Signature

Myrtle H. Traylor  
Official Reporter - Typed

*Myrtle H. Traylor*  
Official Reporter - Signature

Rebecca E. Eyster  
Official Reporter - Typed

*Rebecca E. Eyster*  
Official Reporter - Signature