

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Appeal 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,	)	
Unit 1)	)	
	)	

SUFFOLK COUNTY BRIEF IN SUPPORT OF  
ITS NOTICE OF APPEAL OF THE JULY 10 ASLB ORDER  
DENYING PRODUCTION OF DOCUMENTS BY FEMA AND  
ISSUANCE OF SUBPOENAS TO THE MEMBERS OF THE RAC

Suffolk County submits this brief in support of its Notice of Appeal of the Atomic Safety and Licensing Board's ("ASLB's") July 10, 1984 oral Order denying Suffolk County's Motion to Compel Production of Documents by FEMA, and to Postpone the Cross-Examination of FEMA's Witnesses, and for Issuance of Subpoenas to the Members of the RAC (hereinafter, "ASLB's July 10 Order"). The arguments and background materials contained in the Suffolk County Memorandum in Opposition to FEMA's Appeal and Request for Stay of May 18 Board Order Compelling Production of Documents by FEMA, dated May 23, 1984 (hereinafter, "County's May 23 Memorandum"), the Suffolk County Brief in Opposition to FEMA's Appeal of the May 18 ASLB Order Compelling Production of Document by FEMA, dated June 1, 1984

(hereinafter, "County's June 1 Brief"), and the Supplemental Brief of Suffolk County in Response to May 30 Appeal Board Order, dated June 5, 1984 (hereinafter, "County's Supplemental Brief") are not repeated herein but are hereby incorporated by reference.

For the reasons set forth below, the ASLB's July 10 Order should be reversed.

I. The Facts

A. The County's May 8 Motion to Compel

On April 18, 1984, FEMA submitted to the ASLB presiding over emergency planning issues for the Long Island Lighting Company's ("LILCO's") Shoreham plant the direct written testimony of four FEMA witnesses.<sup>1/</sup> The FEMA testimony was based largely upon the findings of a review and evaluation of the LILCO offsite radiological emergency response plan (hereinafter, the "LILCO Plan") by FEMA's Region II Regional Assistance Committee (hereinafter, the "RAC"). Upon receipt of the FEMA testimony, the County served upon FEMA a Request for Production of Documents (hereinafter, "Request") on April 20, 1984. The

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<sup>1/</sup> Direct Testimony of Thomas E. Baldwin, Joseph H. Keller, Roger B. Kowieski and Philip H. McIntire Concerning Phase II Emergency Planning (hereinafter, the "FEMA testimony").

County also submitted subpoenas to the ASLB for issuance to each member of the RAC, requiring them to appear to be deposed. The County noted, however, that it would not request that the subpoenas be issued unless depositions of the four designated FEMA witnesses were unsuccessful in revealing the bases for the conclusions contained in the report issued by the RAC concerning the LILCO Plan (hereinafter, the "RAC Report").<sup>2/</sup>

FEMA's delay in responding to the County's Request prompted the County to file, on May 8, 1984, a Motion to Compel Response to Request for Production of Documents by FEMA. After the ASLB set a schedule for the parties to respond, the County received FEMA's Response to Suffolk County Request for Production of Documents (hereinafter, "FEMA Response") on May 15 (one day later than the schedule set by the ASLB). FEMA's Response identified 37 documents which were being withheld on grounds of asserted executive privilege. See FEMA Response, at 5-8. In particular, FEMA claimed that the documents revealed pre-decisional communications pertaining to the RAC review process and thus required protection. On May 17, 1984, Suffolk County filed a Motion to Compel Production of Documents Identified by FEMA on May 14 and 15 (hereinafter, "County's May 17

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<sup>2/</sup> Memorandum Explaining Suffolk County Discovery Requests Relating to FEMA, at 4-5 (April 20, 1984).

Motion"), requesting the ASLB to compel production of the 37 documents identified (but withheld) by FEMA, as well as all remaining documents responsive to the County's Request.

B. The ASLB's May 18 Order

During a conference call on May 18, the ASLB issued its ruling on the County's May 17 Motion and ordered FEMA to turn over to Suffolk County 30 of the 37 identified documents. On the same day, the ASLB issued a Memorandum and Order confirming its oral ruling.<sup>3/</sup> The ASLB found that FEMA had asserted a valid claim of executive privilege with respect to the 37 documents at issue. Nevertheless, the ASLB concluded that the County's need for the documents outweighed FEMA's need to protect pre-decisional communications pertaining to the RAC process. The thrust of the ASLB's ruling was that since the RAC review was clearly pertinent to, and indeed formed the basis for, the FEMA witnesses' testimony, the County had a right to probe the underpinnings of the findings contained in the RAC review. Thus, the ASLB held:

[T]he FEMA findings of the RAC Committee are directly relevant to the issue in controversy in this licensing hearing. In general, the parties should be permitted to

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<sup>3/</sup> Memorandum and Order Ruling on Suffolk County Motion to Compel Production of Documents by FEMA (May 18, 1984) (hereinafter, "Memorandum and Order").

inquire into those findings and the procedures which were followed to arrive at the FEMA consensus. Only by probing those findings and determinations, will the parties and the Board be able to assess the weight to be given to those findings and determinations in our review under 10 C.F.R. § 50.47(a)(2).

Memorandum and Order, at 7.

The ASLB further held that:

[I]t would be unfair to deny the County access to the underlying documents and processes by which the RAC Report achieved its final form. . . . [T]he County should be able to discover the underlying documents that went into the formulation of the publicly disclosed RAC Report because the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence. . . . [W]e find that the documents which underlie the RAC Report are centrally important to the County's case in asserting that the LILCO Plan does not comply with NUREC-0654. We do not find that cross-examination alone, without access to these documents, will be equivalent.

Memorandum and Order, at 8-9. The ASLB then ordered FEMA to produce 30 of the 37 identified documents.<sup>4/</sup> However, pursuant to an oral request by FEMA's counsel, the ASLB stayed the effect of its ruling until 5:00 p.m., Monday, May 21.

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<sup>4/</sup> The ASLB found that the County had not shown a compelling need for the remaining seven documents. Memorandum and Order, at 9-10.

C. The Appeal Board's June 13 Order

On May 21, FEMA filed with the Appeal Board a Notice of Appeal and Request for a Stay of an Order of the Atomic Safety and Licensing Board. The Appeal Board granted FEMA a temporary emergency stay on the same day. Following oral argument on the stay request, the Appeal Board extended the stay pending full briefing and argument of FEMA's appeal from the ASLB's May 18 Memorandum and Order.

In a June 13, 1984 decision, the Appeal Board reversed the ASLB's ruling. In the Matter of Long Island Lighting Company (Shoreham Nuclear Power Station, Unit 1), ALAB-773, \_\_\_ NRC \_\_\_ (June 13, 1984). The Appeal Board agreed with the ASLB that FEMA had properly invoked executive privilege with respect to the documents at issue, but disagreed that the County had demonstrated, at least at the time of the appeal, a compelling need to obtain the documents. Id., slip op., at 15-16. However, the Appeal Board also emphasized the preliminary nature and the narrowness of its ruling.

The Appeal Board acknowledged the County's right to explore fully the underpinnings of the RAC review and the final RAC conclusions. However, noting that depositions of the FEMA witnesses had been scheduled but not yet taken, the Appeal Board held that the County had not demonstrated that the

relevant information could not be obtained elsewhere -- for instance, through the scheduled depositions. Id. Thus, the Appeal Board stated:

Obviously, the County is entitled to probe the FEMA findings, explore their bases, assess their accuracy, and determine what reliance should be placed on them. To that end, FEMA will make its sponsoring witnesses available for deposition and cross-examination. They may be examined as to the soundness and reliability of the scientific assumptions or professional judgments underlying the FEMA findings. While the County may well find it helpful to have predecisional materials -- for impeachment purposes or to reveal soft spots in the final testimony, for example -- it has not shown that its right to explore the underpinnings of the FEMA findings and determinations cannot be satisfied without the documents it seeks.

Id.

The Appeal Board also gave weight to representations by counsel for FEMA that the FEMA witnesses would be "forthcoming" and that "the substantive bases or professional judgments underlying FEMA's findings" would be subject to scrutiny during the depositions. Id., slip op., at 16-17. The Appeal Board specifically noted, however, that if this were not the case:

there may, of course, be an eventual need to order release of the documents. That can be done at a later stage, albeit with some compromise in efficiency and additional delay.

Id., slip op., at 18. The Appeal Board also admitted that it had "some uneasiness over the blanket assertion by FEMA that release of any or all portions of the thirty documents will have a chilling effect on its operations." Id., slip op., at 23.

The Appeal Board concluded by restating its position that if the County was unable to get the information it sought through other means, disclosure of the documents would be warranted. Id., slip op., at 25. Thus, the Appeal Board stated:

We emphasize the preliminary nature of our conclusion and the narrowness of our holding. Upon deposition or cross-examination of the sponsoring witnesses, or the review of documents voluntarily released, it may appear that there are good and sufficient reasons to warrant disclosure, such as significant differences of opinion among members of the RAC on important issues affecting the adequacy of LILCO's [P]lan. It may turn out that the sponsoring witnesses are unable to defend or explain adequately the underlying bases for FEMA's determinations or reveal that they have relied to an inordinate degree on the views of others. In such circumstances (and, perhaps, in others), the County may well be able to establish a sufficiently compelling need for the underlying documents.

Id., at 25. (Emphasis added).



D. The Depositions Of FEMA's Witnesses

Counsel for the County deposed FEMA's witnesses on June 27 and 29, 1984.<sup>5/</sup> During the course of the depositions, it became clear that, at least initially, there was a substantial lack of unanimity among the RAC members on many of the findings contained in the RAC Report. This fact was highlighted by notes prepared at the suggestion of FEMA's counsel by FEMA witnesses Keller and Baldwin immediately prior to, and in preparation for, their depositions. These notes, which were turned over to the County and the other parties and made exhibits to the depositions of Messrs. Keller and Baldwin, reflected, among other things, the number of comments received from RAC members on each NUREG 0654 element, prior to a meeting on January 20 with all RAC members in attendance.<sup>6/</sup> This meeting, which was the only meeting of the RAC members assigned responsibility for reviewing the LILCO Plan, was chaired by Mr. Kowieski and led to the issuance of the final RAC Report. Kowieski Tr., at 60-61, 83-85.<sup>7/</sup> The Keller and Baldwin notes also revealed the

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<sup>5/</sup> The County had no control over the timing of these depositions -- counsel for FEMA represented that the witnesses were available only on June 27 and June 29.

<sup>6/</sup> The notes prepared by FEMA witnesses Keller and Baldwin are appended to this Brief as Attachments 1 and 2, respectively.

<sup>7/</sup> Cited pages from the deposition transcripts of Messrs. Kowieski, Keller, Baldwin and McIntire are appended to this Brief as Attachments 3-6, respectively.

number of RAC members who disagreed, at least initially, with the final RAC findings for each NUREG element of the LILCO Plan. Neither the Keller nor the Baldwin notes revealed, however, the identities or agency affiliations of dissenting RAC members or the reasons for their dissenting views.

Mr. Kowieski, the RAC Chairman, also prepared notes in preparation for his deposition at the request of FEMA's counsel. These notes reflected a breakdown of the total comments received from all RAC members, and a narrative description of those comments in disagreement with the final RAC findings. Kowieski Tr., at 51. Although requested by counsel for Suffolk County and New York State, the Kowieski notes were not produced to the parties, and Mr. Kowieski was not permitted to discuss them during his deposition, under instructions from FEMA's counsel. See, e.g., Kowieski Tr., at 54-56, 103, 104.

The County attempted on many occasions during the FEMA depositions to ascertain the reasons for and the substance of the various RAC members' dissenting opinions on specific findings, but was unable to pursue its inquiry. Clearly, it is important for the County to determine which RAC members dissented from various RAC findings. This is a critically relevant inquiry because each RAC member represents an agency with a specific area of expertise. See, e.g., Keller Tr., at 57. Thus,

it is important to determine whether RAC members with expertise in a particular area disagreed at any time with the findings in the final RAC Report, if so, why, and why those opinions were changed, overruled, discarded, or otherwise not reflected in the final RAC conclusions. Yet, counsel for the County was unable to obtain answers to questions regarding the specific reasons or bases for RAC members' dissenting opinions, or the agency affiliations or areas of expertise of the dissenters, by the witnesses' lack of recollection about such dissenting opinions and by FEMA counsel's refusal to permit the witnesses to answer such questions.

For example, during the deposition of FEMA witness Baldwin, the following exchange took place:

Q. And do you have any independent recollection? Are you able to tell me which five agencies or individuals provided this comments on Element A.1.A?

A. Not in specific detail, no.

Q. Would your answer be the same for each NUREG element set forth on the seven pages of your notes?

A. Yes, it would.

\* \* \*

Q. For each element of NUREG 0654, are you able to tell me, based on your notes or anything else, which agencies or individuals of the RAC were at least initially in the minority with respect to how an item should be rated?

A. Which particular agencies, no. I would not be able to do that.

Baldwin Tr., at 150. Further, FEMA witness Kowieski was prohibited by FEMA's counsel from providing the requested information, even though he could have refreshed his recollection by reviewing the notes he had with him at the deposition and providing the information sought by the County's counsel (see, e.g., Kowieski Tr., at 51-56, 99-103, 117) as demonstrated by the following exchange:

Q. Now, I would like you, Mr. Kowieski, ... if you would please, using the RAC Report, element by element, to tell me the members of the Committee who believed that the rating finally determined in the RAC Report who initially believed that was a correct rating?

Mr. Glass: I object. You are trying to get through the back door the same information that you were tried to get through, and went up to the Appeal Board. You are trying to have him identify preliminary statements that were contained on the original documents which were held to be subject to privilege. You are trying to obtain the same, exact information. You are trying to have him identify which individual said, 'adequate,' and which individual said, 'inadequate' on those preliminary documents, and the Appeal Board has upheld FEMA's position. And I do not see anything at this point which indicates you are entitled to that information, or that there is any need for that information.

\* \* \*

As to this particular question, it is my understanding -- correct me if I am

wrong -- that you are asking him to identify for you the positions of the individual RAC members as provided on their comment sheets to the RAC Chairman prior to the January 20th meeting. If that is what you are instructing him to do, I am instructing the witness not to answer your question.

Mr. Miller: Is your instruction the same if I asked Mr. Kowieski to identify representatives -- if I asked Mr. Kowieski to identify the agencies represented?

Mr. Glass: That is the same question. We have -- it is a very simple mathematical formula.

Mr. Miller: Was your instruction not to answer the question?

Mr. Glass: Let me finish my statement. It is a very simple mathematical formula you have. We have already provided you the names of the agencies and who the individuals are, so if he was to provide the answer to your second question, he would in effect be providing the same answer.

And, therefore, I am instructing the witness not to answer.

\* \* \*

Mr. Miller: . . . I am talking about the position of the RAC members, including Messrs. Keller and Baldwin, in their written comments or otherwise, that were submitted prior to the January 20th meeting, I want to know the positions of the members of the Committee with respect to whether they were in agreement or disagreement with the rating finally derived and set forth in the RAC [Report] issued to the NRC.

Mr. Glass: I am instructing the witness not to answer the question. You have had Mr. Keller here; you have had Mr.

Baldwin here. You took the opportunity with Mr. Keller to inquire. He gave you a listing of what his original ratings were, so you have that information. And I am instructing the witness not to answer at this point.

\* \* \*

Q. [Mr. Miller:] Mr. Kowieski, you have been instructed not to answer my question, and of course I have to abide by that. But I want to make it clear for the record that my opportunities to question Mr. Keller and Mr. Baldwin went to their involvement in the RAC.

Mr. Kowieski is here as Chairman of the RAC. He had the information available to him to tell me the members and their positions on the RAC; Mr. Keller and Mr. Baldwin both made clear they were not in a position to give me that information.

So, there is a difference.

Kowieski Tr., at 117-122; see also, Keller Tr., at 42, 69-70; Baldwin Tr., at 145-152; McIntire Tr., at 69.

Furthermore, the witnesses were unable to give meaningful explanations of the bases for the conclusions or opinions of individual RAC members, and they were unable to describe even what portions of the LILCO Plan the RAC members reviewed. For example, during his deposition Mr. Baldwin testified as follows:

Q. But do you know what [the RAC members] did to reach their conclusions regarding those elements of NUREG 0654?

A. It's impossible for me to get inside of their head and to go through their thinking process.

Q. I'm not asking you about their thinking process. I'm asking you, do you know what these people did with respect to reaching their conclusions and judgments regarding the LILCO plan?

[Colloquy of counsel deleted]

BY MR. MILLER: (Continuing)

Q. Mr. Baldwin, do you know what members of the RAC, including Mr. Keller, reviewed to reach their conclusions and judgments as set forth in their comments?

A. Yes. They reviewed the plan, the implementing procedures and the Appendix A of the evacuation study.

Q. And you specifically know that each member of the RAC and Mr. Keller did that; is that correct?

A. Yes. I know that each reviewed those various parts in order to be able to supply us with their comments.

Q. Now, can you tell me what parts or portions of each of the four volumes of the total LILCO plan the members of the RAC and Mr. Keller reviewed?

A. I have no specific direct knowledge of those parts which each member -- how each member went about their task. I have no direct knowledge of how each one went about reviewing their entire set of four documents, four volumes.

Baldwin Tr., at 42-43.

Similarly, Mr. Kowieski was unable to describe the bases for the conclusions or opinions of the RAC members:

Q: Mr. Kowieski, are you able to tell me what the members of the RAC Committee did in preparing their comments that were submitted prior to the January 20th meeting?

A: I don't understand your question.

Q: Well, you have told me that what you did in your review with respect to the RAC review process was that you reviewed the LILCO Plan, portions and parts of the LILCO Plan, correct?

A: At what point? At a certain point, yes.

Q: Okay. Now, those members of the RAC Committee who provided comments that were used at the January 20th meeting, do you know what they did; for example, what they looked at and reviewed in order to make determinations as set forth in their comment that was sent to your attention?

A: I can tell you the four volumes of the LILCO Transition Plan, and NUREG 0654. They used their professional judgment, expertise, based on their educational background and experience gained in the past.

Q: Do you specifically know that the only thing the members of the Committee used in their review were the four volumes of the LILCO Plan?

A: If I know?

Q: Yes, sir.

A: They were requested to provide comments on the LILCO Transition Plan, Revision 3.



Q: Do you know, though, what they actually did do in providing their comments to you for use in the RAC review process?

A: They did not advise me otherwise when they submitted comments to me.

Q: I want to repeat my question. Do you know, specifically know, what members of the Committee did in preparing their comments on the LILCO Plan that was sent to you?

A: They --

Mr. Glass: This is getting back to the same situation which was gotten into in the three prior instances. If you are asking Mr. Kowieski was he present, and did he watch what each individual did, so that he can then say for a fact that he saw the person open and read all four volumes and NUREG 0654, you can understand his hesitancy to be able to respond to such a question.

BY MR. MILLER: (Continuing)

Q: I am sure, Mr. Kowieski, that you did not watch the members of the Committee in what their review consisted of, is that correct?

A: No, I did not sit in their office and watching them review the LILCO Transition Plan, Revision 3, that is correct.

Q: Did you ever specifically ask any member of the Committee, including Messrs. Keller and Baldwin, what they did in reaching their conclusions and judgments regarding the LILCO Plan?

A: At the meeting I asked -- at the January 20th meeting, okay, if, for instance, an issue came up, if they review, for instance, Appendix A. Basically I would insult their intelligence by asking, say: Have you reviewed the Plan. Did you base your comments on the Plan?

Because, you know, those people are professional individual, and are being designated by their respective agency to assist FEMA, and I have to maintain a certain relationship. I cannot insult them by asking them a very obvious question.

Q: Yes, sir, I understand. Did you ever specifically ask any member of the Committee, however, if they reviewed anything other than the LILCO Plan?

A: No, sir.

Q: The answer is, 'no?'

A: Yes, sir.

Kowieski Tr., at 104-107; see also Kowieski Tr., at 45-47, 107-108; Baldwin Tr., at 35-45, 155-156; McIntire Tr., at 71-72.

Furthermore, the County was not permitted to complete the deposition of Mr. Kowieski. Instead, counsel for FEMA announced that Mr. Kowieski had to leave before the County had completed its questioning, despite an agreement between counsel for the County and counsel for FEMA that Mr. Kowieski's deposition would be permitted to continue into the evening, if necessary, in return for the County's agreement that the deposition of FEMA witness Baldwin would be taken first on Friday, June 29. As a result, the County was prevented from obtaining information pertinent to the RAC review.

E. The County's July 6 Motion to Compel

Because the County was unable to ascertain the reasons for and the substance of the various RAC members' dissenting opinions on specific RAC findings during the depositions of the FEMA witnesses, the County filed on July 6, 1984, a Motion to Compel Production of Documents by FEMA, and to Postpone the Cross-Examination of FEMA's Witnesses, and for Issuance of Subpoenas to the Members of the RAC (hereinafter, the "July 6 Motion"). The July 6 Motion requested the ASLB to compel FEMA to produce the 30 documents which FEMA had refused to produce on the asserted grounds of executive privilege. The July 6 Motion also sought the issuance of subpoenas to the members of the RAC so that the County could depose them regarding their participation in the RAC review of the LILCO Plan. Finally, the County requested the ASLB to postpone the cross-examination of FEMA's emergency planning witnesses, then scheduled to commence on July 10, 1984, until the County had had an opportunity to conduct discovery pursuant to the requested subpoenas. In the County's view, such a postponement was warranted since the County could not meaningfully probe the bases for the FEMA witnesses' opinions and the findings and conclusions of the RAC, upon which the FEMA witnesses' testimony was based, without an opportunity to obtain and review the documents at issue and to question the RAC members regarding the bases for their evaluations of the LILCO Plan.

F. The ASLB's July 10 Order

On July 10, 1984, the hearing before the emergency planning ASLB was reconvened.<sup>8/</sup> During the July 10 session, the ASLB issued its ruling on the County's July 6 Motion, denying all three requests by the County, i.e., for production of the FEMA documents, issuance of subpoenas to the RAC members, and postponement of cross-examination of the FEMA witness panel. Tr. 12,127-130.<sup>9/</sup> Although LILCO, on July 9, had filed papers with the ASLB opposing the County's July 6 Motion,<sup>10/</sup> and although counsel for FEMA was granted permission by the ASLB to respond orally to the County's July 6 Motion (see Tr. 12,116-124), the County was denied any opportunity to respond to either the opposition filed by LILCO or the arguments of FEMA's counsel (Tr. 12,127). The ASLB's refusal to permit any response by the County was prejudicial to the County in that: (1) as pointed out to the Board at the time the County requested to be heard, the arguments made by FEMA's counsel mischaracterized and misstated the record (Tr. 12,124); and (2)

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<sup>8/</sup> The trial had recessed on June 15, 1984, and, during the ensuing three-week period, the County had deposed the four FEMA witnesses, as discussed above.

<sup>9/</sup> Transcript pages referenced are from the hearings before the ASLB and are appended hereto as Attachment 7.

<sup>10/</sup> LILCO's Reply to Suffolk County Motion Concerning FEMA Discovery (July 9, 1984).

the ASLB's July 10 ruling specifically relied upon the facts asserted by LILCO in its written opposition, without any opportunity by the County to respond (Tr. 12,127-130). Moreover, although the County was not given an opportunity promptly sought reconsideration of the ASLB's ruling (Tr. 12,131-133), the request for reconsideration was also denied by the ASLB. Tr. 12,133.

In denying the County's July 6 Motion, the ASLB found that the County's desire to identify the dissenting RAC members and the reasons for their dissenting views represented a "complete about-face from the County's position before the Appeal Board" since, according to the Appeal Board's opinion (ALAB-773, slip op., at 17) "[c]ounsel for the County [had] disavow[ed] any particular interest in the names of individuals putting forth specific views . . . [but sought] only the basis of the RAC conclusions." Tr. 12,128. The ASLB also concluded that the County had not explained why it had become important to have such information. Id.

Further, the ASLB, following the guidelines set forth by the Appeal Board in its June 13 Order (ALAB-773, slip op., at 25), decided that the County had failed to show a compelling need for the documents withheld by FEMA. Specifically, the Board held:

Suffolk County has not established 'significant differences of opinion among members of the RAC on important issues affecting the adequacy of LILCO's [P]lan.'

Moreover, the County has not established that these FEMA witnesses are unable to defend and explain adequately the FEMA findings or that the witnesses view[s] were inordinately derivative of other views. Unless the County makes such a showing, the executive privilege precludes probing the individual views of individual RAC members.

Tr. 12,128-129.

Finally, the ASLB also denied the County's July 6 Motion because it believed the Motion was "inexcusably late." Tr. 12,129.

## II. Discussion

### A. The ASLB's July 10 Order Should Be Reversed

The legal principles governing the dispute surrounding the documents withheld by FEMA are uncontested and unchallenged. These principles -- that the executive privilege asserted by FEMA is a qualified privilege which can be overcome by a showing of compelling need, and that a balancing test must be applied to determine whether the demonstrated need outweighs the asserted interest in confidentiality or "chilling effect" -- thus constitute the standard to be applied in this appeal with respect to the FEMA documents sought by the County.

1. The County Has Been Denied Its Right to Probe  
the Bases of the RAC Review and the Opinions of  
the FEMA Witnesses

Both the ASLB and the Appeal Board have recognized that Suffolk County, as a party to this proceeding, has a right to probe the bases for the opinions and conclusions stated by the FEMA witnesses in their testimony and in the RAC Report attached to their testimony, both for impeachment purposes and to develop a full and complete record. Memorandum and Order, at 7-8; ALAB-773, slip op., at 15-16. This right is founded in the NRC's own regulations, which provide that a party is entitled to conduct "such cross-examination as may be required for full and true disclosure of the facts." 10 CFR § 2.743(a). Likewise, 10 CFR § 2.740 guarantees the right to prior discovery of materials reasonably calculated to lead to admissible evidence.

The need for the County to explore the underpinnings of the RAC review is especially important here because it serves as the very foundation upon which the testimony of FEMA's witnesses is based. This fact initially prompted the ASLB to determine that the findings of the RAC are "directly relevant to the issue in controversy in this licensing hearing." Memorandum and Order, at 7. Indeed, the ASLB found that the information sought by the County was "centrally important to the

County's case in asserting that the LILCO Plan does not comply with NUREG 0654." Id., at 9. Thus, the ASLB concluded that:

Only by probing those findings and determinations will the parties and the Board be able to assess the weight to be given to those findings and determinations in our review under 10 CFR § 50.47(a)(2).

Id., at 7.

In its June 13 Order, this Appeal Board did not dispute the County's right to information regarding the bases for the conclusions found in the RAC Report. Rather, its chief difference with the ASLB's May 18 ruling was that the County, in the Appeal Board's opinion, had not yet demonstrated that the information was unavailable through means other than disclosure of the documents at issue. ALAB-773, slip op., at 15-16. Indeed, the Appeal Board strongly suggested that if the County was not provided with the information it sought through the scheduled depositions of the four FEMA witnesses, then disclosure of the FEMA documents would be warranted. See id., at 16, 18; 25. By way of example, the Appeal Board set forth three circumstances under which the County could establish a sufficiently compelling need for the withheld FEMA documents. In this Board's view, a compelling need for disclosure could be demonstrated where:



- (1) There are "significant differences of opinion among members of the RAC on important issues affecting the adequacy of LILCO's plan"; or
- (2) The "witnesses are unable to defend or explain adequately the underlying bases for FEMA's determinations"; or
- (3) The "witnesses reveal that they have relied to an inordinate degree on the views of others."

Id., at 25.

Notwithstanding the ASLB's contrary opinion (see Tr. 12,128-129), following the depositions of the FEMA witnesses the County found itself in the very circumstances which the Appeal Board contemplated would compel disclosure of the FEMA documents. For instance, the County was able to determine during the depositions held on June 27 and 29 that, in many instances, there was, at least initially, a difference of opinion among RAC members as to whether a particular portion of LILCO's Plan should be rated as adequate or inadequate. This fact was evident from the notes produced by Mr. Baldwin and Mr. Keller. As can be seen from a review of those notes, on approximately 70 of the 108 NUREG 0654 elements, there was not, at least initially, an unanimous view among the RAC members on the appropriate rating for the LILCO Plan. The County, however, was precluded from discovering the nature of the dissenting RAC members' opinions, the bases for those opinions, or even

whether the dissenters were from agencies with expertise in the area at issue. This was due not only to the witnesses' lack of knowledge or recollection, but also to FEMA counsel's refusal to permit the witnesses to testify on these matters when they admittedly were able to do so. See, e.g., Kowieski Tr., at 117. Thus, despite assurances from FEMA's counsel that the information sought would be forthcoming, the County was prohibited from probing the bases for the findings in the RAC review.

For this reason, Suffolk County submits that the ASLB erred in refusing to compel FEMA to produce the documents sought by the County because of the County's failure, in the ASLB's view, to establish "significant differences of opinion among members of the RAC on important issues affecting the adequacy of LILCO's [P]lan." Tr. 12,128-129. It is abundantly clear from the depositions of the FEMA witnesses that there were significant differences of opinion among RAC members regarding the Plan's compliance with NUREG 0654. While the FEMA witnesses stated that a "consensus" was reached among all of the RAC members on all issues discussed at the January 20 meeting, the County was effectively barred from determining the extent of the RAC members' differences of opinion and the process by which "consensus" was achieved on all issues by the witnesses' lack of knowledge, the witnesses' failure of memory, and by FEMA counsel's instructions to the witnesses not to

answer pertinent questions. Similarly, the County was prevented from determining whether the FEMA witnesses "relied to an inordinate degree on the views of others," a circumstance which, according to this Board, could well establish a sufficiently compelling need for the withheld FEMA documents. ALAB-773, slip op., at 25. Nevertheless, the testimony that was elicited, together with the produced notes, conclusively demonstrate that such "differences of opinion" existed and that whatever differences of opinion existed concerned the RAC's determinations about the adequacy of LILCO's Plan. Accordingly, the County believes that the intent of the first circumstance articulated by this Board, under which disclosure of the underlying FEMA documents would be justified (id.), has been satisfied.

Moreover, the testimony elicited during the FEMA depositions conclusively demonstrates that the FEMA witnesses were unable to defend or explain either the procedures, methods, or activities undertaken by RAC members in performing their review of the LILCO Plan and reaching their conclusions about its adequacy. In fact, the County could not even ascertain what, if any, materials were reviewed by individual RAC members, other than the Plan itself. Thus, this Board's second circumstance under which disclosure of the FEMA documents would be warranted, that is, the FEMA witnesses' inability "to defend or

explain adequately the underlying bases for FEMA's determinations" (id.), has been satisfied.

Accordingly, the Appeal Board should reverse the ASLB's July 10 ruling and order FEMA to release the 30 documents which were the subject of the ASLB's previous Memorandum and Order.

Further, the Appeal Board should order FEMA to produce the notes which were prepared by Mr. Kowieski immediately prior to his deposition on June 29. The existence of those notes was revealed during Mr. Kowieski's deposition and they were requested by counsel for Suffolk County, since Mr. Kowieski was referring to them in connection with his answers to deposition questions. Mr. Kowieski also indicated that by reference to the notes he had prepared for his use during his deposition, he could have answered the County's questions concerning the substance and sources of dissenting RAC member comments. Kowieski Tr., at 117. Clearly, such notes, which were prepared by the witness himself, solely as a means of preparing himself for his deposition, are not subject to the executive privilege. They were not prepared during or as any part of any "decision-making" process and counsel for FEMA failed to state on the record of the Kowieski deposition any legitimate basis for his refusal to produce them. Further, even assuming the notes are somehow privileged, any alleged privilege would have been

waived by FEMA's production of the similar notes prepared under identical circumstances by Mr. Baldwin and Mr. Keller.

2. Under the Circumstances, the County Is Entitled to Discover the Identities of Individual RAC Members and Their Opinions and Conclusions Regarding the LILCO Plan

In its July 10 ruling, the ASLB criticized the County for what it termed a "complete about-face" by the County from the position taken before the Appeal Board regarding the need to know the identity of individual RAC members and their specific views about the LILCO Plan. Tr. 12,128. The County submits that there has been no "about-face" and that, to the contrary, the County's position before this Board and in its July 6 Motion are consistent.

At the time argument was heard before this Board, the County had not requested the identities of individual RAC members or their specific views about the LILCO Plan. In response to a question from the Board, the County's counsel noted that, in the discovery requests that were at issue before the Appeal Board, the County had only requested production by FEMA of documents relevant to the RAC's review of the LILCO Plan. In those discovery requests, the County had not expressly sought the individual identities or opinions of the RAC members. Moreover, the fact that disclosure of the documents requested

by the County would reveal individual RAC identities was not known until after FEMA had responded to the County's discovery requests. During the argument before this Board, however, the County's counsel stated that, if there was not unanimity among the RAC members, individual identities of dissenters could be important. Obviously, if, in fact, there had been unanimity among the RAC members, it would not now be important to determine individual identities or opinions.

However, as demonstrated during the FEMA depositions, there was a significant lack of unanimity, at least initially, among the RAC members. Therefore, the individual identities and opinions of the various members are relevant and significant matters. For example, without such knowledge, it cannot be determined whether or why a particular individual's opinions were overridden or ignored by the RAC in reaching a "consensus," even though that individual may have had pertinent expertise or experience in a relevant subject matter. Clearly, the identity of, and bases for, an individual dissent could be significant in determining the weight to be assigned to a particular RAC conclusion. Accordingly, the County submits that, under the circumstances, it is important for the County to discover the identities of individual RAC members and their opinions or conclusions regarding the LIICO Plan, and that the ASLB therefore erred in denying the County an opportunity to learn such information.

3. The County's July 6 Motion, Contrary to the ASLB's July 10 Ruling, Was Not Untimely

The ASLB also criticized the County for "waiting a full week after completion of the last [FEMA] deposition before filing [the July 6] [M]otion." Tr. 12,129. Indeed, the ASLB rested its denial of the County's July 6 Motion, in part, on the grounds that the Motion was "inexcusably late." Id. Suffolk County submits that the ASLB erred in this regard.

Contrary to the ASLB's opinion, the County did not wait a full week before filing the July 6 Motion. Rather, the County had available to it but three business days from the time the deposition transcripts were received until the time the July 6 Motion was filed. The last FEMA deposition was completed Friday, June 29, at about 7:30 p.m. The deposition transcripts did not become available until approximately midday on Monday, July 2. The four transcripts totalled some 600-700 pages in length. Of course, the County recognized the importance of preparing and filing its Motion as quickly as possible, and began preparing the Motion on Tuesday, July 3. However, in light of the sheer size of the transcripts, the need to review the transcripts to determine whether a motion to compel should be prepared, and the intervening July 4 holiday, the County was unable to prepare and file its Motion earlier than July 6. Under the circumstances, the County submits that the July 6

Motion was filed in a timely manner and believes it was error for the ASLB to have rested its denial of the Motion in any way on the belief that the Motion was untimely.

4. The ASLB Should Have Issued Subpoenas to Depose All of the RAC Members

On April 20, 1984, the County submitted to the ASLB a number of subpoenas directed to individual RAC members. The County did not then request that those subpoenas be issued, in the hope that during their depositions the four FEMA witnesses would be able to respond satisfactorily to the County's questions regarding the RAC review. Memorandum Explaining Suffolk County Discovery Requests Relating to FEMA, at 4-5 (April 20, 1984). The County specifically stated:

If, however, the FEMA witnesses are not able to provide the information requested by the County, or if FEMA either does not have in its custody, or refuses to produce pertinent documents related to the RAC review, it may be necessary for the County to pursue the additional discovery described above directed to individual RAC members. . . .

Id.

It is now apparent that FEMA's witnesses are unable to explain what individual members of the RAC did in reviewing LILCO's Plan and what their opinions were as a result of that



review. Indeed, as noted above, FEMA's counsel prohibited the County's inquiry into these issues by instructing FEMA's witnesses not to answer relevant questions on this issue. Therefore, the only way for the County to discover this relevant information is to depose each RAC member. Thus, the ASLB should have issued the April 20 subpoenas so that the depositions could be arranged and taken expeditiously. In light of the ASLB's refusal to do so, Suffolk County hereby requests this Board to remand this issue to the ASLB, with instructions to issue the pending subpoenas forthwith.

5. Cross-Examination of FEMA's Witnesses Should Have Been Postponed Until the County Had Received and Reviewed the FEMA Documents and Deposed the RAC Members

As noted above, the County is entitled to conduct a full cross-examination of FEMA's witnesses after having had the opportunity to discover all evidence relevant to the issues at hand. The County, however, has not had the opportunity to explore the relevant facts behind and the underpinnings of the RAC review and the RAC findings and conclusions, and thus was prejudiced when compelled by the ASLB's July 10 ruling to go forward with its cross-examination of the FEMA panel. Such cross-examination was necessarily based on only partial knowledge of the facts.

The FEMA witnesses are scheduled to return to the hearings to testify during the week of August 14. Thus, if this Appeal is granted and the requested discovery can be conducted promptly, the cross examination which could not be conducted in July could be conducted in August, without substantial delay in the proceedings. Therefore, the County requests this Board to consider and rule on the issues presented herein as expeditiously as possible.<sup>11/</sup>

B. Conclusion

For the reasons stated above, the County submits that this Board should reverse the ASLB's July 10 ruling and grant the relief requested herein.

Respectfully submitted,

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Dated: July 26 1984

<sup>11/</sup> The County could not have filed this Appeal any earlier because the emergency planning hearings in which cognizant counsel were involved did not adjourn until July 20.

ATTACHMENT 1

17 ps 9

344

~~32-79 AP~~

I	K A 1a	I	7/5	1 e (?) legal
I	K-B A 1b	I	4/5	1 e local support (AP)
I*	K A 1c	I*	2/5	1 e outside consultant
*	K A 1d	AP	3/4	1 local issue
	B A 1e	A	3/4	1 issue
I	X-B A 2a	I	3/4	4 items assembly 11-8-84
	K A 2b	I	4/4	
	K-B A 3	I	4/7	home layout
I	K-B A 4	A	4/11	detailer for CR
I	K C 1a	A	3/4	coll. good
I	* K C 1b	AP I	2/3	accident
I*	B C 1c	I	3/6	jurisdiction
	B C 1d	A I	2/6	all to do with no local *
*	C 3	A	11/4	
I	K-B C 4	I	7/7	
	D 3	A	11/4	
	D 4	A	7/7	
	K-B E 1	AP I	4/7	obscene
	K-B E 2	A	5/5	obscene
	B-K E 5	AP -	3/4	EBS title (legal)
	B-K E 6	A -	3/5	state statute (legal)
I	B-K E 7	A	6/7	minor not
	B-K F 1a	A	11/4	
I	B F 1b	AP	2/5	continuation *
*	F 1c	I	2/5	jurisdiction *
	K F 1d	A	11/4	
	K-B F 1e	AP	11/4	
	B F 2	A	11/4	
	B F 3	AP	5/6	Ans. Bus. for personal
	G 1a	A	5/5	
	G 1b	A		
	G 1c	A		
	G 1d	A		
	K-B G 2	A	3/4	I- not plan
	K-B G 2a	A ?	3/4 (legal)	
	K-B G 2b	A	3/4	couldn't locate
	K-B G 4b	A	4/4	
	K-B G 4c	A	3/4	not relevant

~~344~~

*	H 3	A	4/4	Red head card	
I*	B 44	AP	3/5	Sm - 600? legal	
I*	47	API	4/6	action - except	
*	H 10	A	5/5		
*	H 11	AP	5/5		
*	H 12	A	5/5		
*	I 7	AP	4/5	5-part - 24 + 1000 Tom	
*	I 8	I A	4/5	no stat on APs	* PS
I*	I 9	I	2/6	Basin + Man	*
I*	I 10	I	1/5	looking Homogeny - in spec 1.5.2	*
*	I 11	A	4/4		
I*	B J2	I	3/5	same as -	
I*	59	I	2/6	plan - conditions T&E	* PS
I	B I 100	A I	3/5	no load on maps substance	
	B 105	I	2/5	maps by ASMA	*
	15 106	A	2/4	given actual legal	
	K 107	AP	2/4	actual interview	
I*	108	I	4/6	no actual	
I*	109	AP	4/6	and map. (2.6.1) Severance legal	
	K-B 109	AP I	3/5	contains 200 2000 - contract 7P	
	B 110	I	3/5	disturb 15000	
	B 102	A	5/5	legal	
	K-B 103	A I	3/5	single - 2000 - structure	
	B 104	I	3/5	structure	
	B 106	A	5/5		
I*	107	I	1/3	plan stat	* PS
I*	J 11	I	3/5	proceed plan no map	*
I*	J 12	I	4/6	proceed	
I*	K 12	I	2/6	details	*
*	K 13	A	4/4		
*	K 14	A	4/4		
I*	K 15	I	1/5	drawings	*
*	K 16	I	2/5	drawings	*
I*	L 1	I	3/5	drawings	
I*	L 3	I	3/5		
I	B L 4	AP	3/5	letter	
*	M 1	I A	3/4	drawings details	* PS
*	M 3	A	3/3		
*	M 4	I	2/6	detail	*

	BRN12	A	3/5	st. ...
	BRN16	A	3/6	legal
	B N22	A	3/4	procedural
	B-N22	A	5/5	
*	B N24	AP	5/5	decisions
*	N201	A	4/5	
	B N32	A	4/4	
	N36		4/4	
	N30		4/4	
	N3d		4/4	
	N3C		4/4	
	N3F	A	3/4	agreement
	B N4	A	5/6	status
	K N5	AP	2/3	agreement

*	21	A	3/4	all FRANK
	KB 016	IA	1/5	5/15 follow
	KB 022	A	5/5	
*	025	I	1/5	plant status
*	046	A	5/5	
	KB 048	I	1/3	

	KB 048	A	3/4	agreement
	KB 019	A	3/4	legal/superv
	KB 046	A	3/4	
	B 045	A	4/4	
	KB 05	A	4/4	
	K P1	A	4/4	
	K P2	A	4/4	
	K P3	A	4/4	
I	B P4	AP	4/5	agreement not in plan need
I	B P5	A	4/5	not status
	B P6	A	4/4	
I*	P7	A	4/5	not follow 065-1
	B P8	I	1/4	065-1
	K P10	A	4/4	

ATTACHMENT 2

RK A.1.a	I*	5/4	Legal ?
RKTB A.1.b	I	5/4	1 R/M suggested Suffolk Co role should be clarified
JRKA A.1.c	I	5/4	Final - 1 R/M raised A w/o support
RKJK A.1.d	AP	4/3	1 R/M raised legal issue - would state recognize LERO authority for strategic control and decision making - legal issues treated separate from technical - Provisional - outside bounds of 0654
TB A.1.e	A	4/3	1 R/M interpreted 0654 and org - 24 Hr could not locate in plan - agreed RECS = primary notification system
RKA 2.a	I*	8/3	
		I-3	- lead / primary responsibility
		A-4	
		2-1	
" 4.2.b	I*	4/4	* Legal authority cited is not appropriate
A.3	I*	7/4	3 - R/M recognized LoOG
TB A.4	A	4/4	
RK C.1.a	A*	4/3	1 cross reference incorrect
RK C.1.b	AP I	3/2	1 - Estimated hours of annual for Fed Agencies of requested
JRKB C.1.c	I	6/3	3 R/M FRMAP agreement I - jurisdictional dispute - letters of support needed for fed response.
TB C.2.a	A I*	6/2	
		A-2	LERO - substitutes for state and local response
		I-4	based on strict int. of 0654 - local person drop to EOP
JR C.3	A	4/4	
RKTD C.4	I*	7/7	
D.3	A	4/4	
D.4	A	4/4	



RK TB E.1 AP I 7/1

A - content adequate  
✓ I-1 Does not provide for consultation w/ state plan go  
plan replaces S & L govt of LERO  
concerns - not an issue

RK TB E.2 A 5/5

RK TB E.5 AP\* 4/3

A - provided EBS nomenclature in changed  
- I 1 - legal?

TB RK E.6 A\* 5/3

✓ I - Based on S & L govt. activate system - legal  
A LERO replaces S & L govt.

TB RK E.7 A 7/6

A - meets OGS  
I 1 - minor omissions - messages K & L

TB RK F.1.a A 4/4

JR, TB F.1.b AP \* 5/2

A - Plan provides for notification  
I 1 - Rhode Island - Officials so in EPZ + compliance

F.1.c I \* 5/2

A Agencies save themselves  
I 2 - goes H&H w/ C.1.e

RK F.1.d A 4/4

RK TB F.1.e AP 4/4

goes w/ E.1

TB F.2 A 4/4

TB F.3 AP\* 6/5

I 1 - basis for pres. approval

BRK { G.1.a A 6/6

{ G.1.b A 6/6

{ G.1.c A 6/6

{ G.1.d A 6/6

RK TB G.2 A 4/3

\* I-1 - questioned effectiveness of public ed. program  
I-1 legal?

RK TB G.3.a A\* 4/3

RK TB G.4.a A 4/3

I-1 could not locate info in plan

RK TB G.4.b A 4/4

RK TB G.4.c A 4/3

I-1 not really a report

? G.5 A 3/3

H.3 A 4/4  
 H.4 AP\* 5/3 ✓ I-2 rad health Coord. not on call  
~~ECF not finished~~  
 legal ? State EOC  
 H.7 AP I 6/4 I-2 Equipment ownership / maintenance  
 DOE/LILCO storage  
 H.10 A 5/5  
 H.11 AP 5/5  
 H.12 A 5/5

I.7 AP 5/4 I-1 comparison of LILCO and DOE equipment.  
 Homograms - field; not recorded in lab  
 I.8 I A \* 5/8 ✓ A-4 Actual handled  
 I-1 Info obtained at RAC meeting 1/20/84  
 Potential not handled  
 I.9 I \* 6/2 x A-4  
 I-2 Detailed review of procedures } 2 RM background  
 Homograms - provided as wrong } and interest  
 more detail  
 I.10 I \* 5/1 x A-4 Actual handled  
 I-1 Detailed review of procedures - Homograms missing  
 Plant conditions - Potential not handled  
 I.11 A 4/4

JB JK	J.2	I		5/3	A-2	did not consider impact of gen pop on area
JK	J.9	I	*	6/2	X A-4	overlooked FOA values in table
					I-2	plant conditions - Anticipate potential releases
TB	J.10.a	A*	I	5/3	✓ I-2	FOA values in table not right #;
TB	J.10.b	I	*	5/2	A-3	Maps w/ relocation centers not labeled
					I-2	no legend, no scale
RK	J.10.c	A*		4/2	A-2	looked at table but not maps
					I-2	No pop dist map.
RK	J.10.d	AP		4/2	- I-2	plan is adequate
					A-2	Screen activation legal?
JK	J.10.e	I		6/4	✓ I-2	Adq partly directory of Mob. Imp.
					A-2	Directory of Mob Imp. - included in AP (in
JK	J.10.f	AP*		6/4	I-4	KI discussed - screening procedure not cons.
					A-4	Screening, expiration dates ..
RK TB	J.10.g	AP	I	5/3	✓ I-2	Screening procedures must be included
					A-3	legal (?), screening
RK TB	J.10.h	I		5/3	✓ I-2	concerns included from I retraps in AP
					A-2	Commitment of resources - i.e. letters of agreement
TE	J.10.i	A		5/5	I-3	not congruent of distance factor
					A 5	distance 5 and possibly 10 miles by road
TB RK	J.10.j	A*	I	5/3	I-0	Traps capacity in Appendix A
					A-3	TCPs listed in plan - 147
					I-1}	legal?
TB	J.10.k	I*		5/3	X ? -1	
					A-2	relocates letters - strategy
TB	J.10.l	A		5/5	I-3	Letters - strategy of gen surv. immov.
					A 5	
JK	✓ J.10.m	I		2/1	I-0	
					A-1	did not consider potential plant conditions
JK	J.11	I	*	5/2	I-1	
					A-3	procedures are in plan
					I-2	maps list
					A-2	concluded buildings were sufficient
					I-4	more detail re: separation of potentially cont.

JK	K.3a	I	* 6/2	✓ A-4 I-2	Overlooked detailed procedures document charges issued to workers.
JK	K.3b	A	4/4	A-4 I-0	
JK	K.4	A	4/4	A-4 I-0	
JK	K.5.a	I	* 5/1	A-4	lack of detail in review - overlooked detail
JK	K.5.b	I	* 5/2	$\frac{I-1}{A-3}$ $\frac{I-2}{x?}$	detailed review of CPM/140/hr reading by Keller overlooked some detail picked up by other R/P down disposal equip, supplies don't meet 0654
JK	L.1	I	5/3	$\frac{A-2}{I-3}$	overlooked Commission ruling San Onofre
JK	L.3	I	5/3	A-2 I-3	
TB	L.4	AP	5/3	A-3 - I-2	concerns included in AP Letter of agreement, 0654 x ref.
JK	✓ M.1	I	* 8/3	$\frac{A-4}{I-3}$	overlooked issues - details plant conditions
JK	M.3	A	3/3	A-3 I-0	
JK	M.4	I	* 6/2	$\frac{A-6}{I-2}$	Overlooked detail - Encl. not necessary for No method for estimating, exp. expense.

2/10 N.1.a	A*	5/3	A-3
TBRK N.1.b	A*	* 6/2	I-2 legal? state + local participation A-2 plan estimates means for mobilizing LEEO pers...
TB N.2.a	A	4/3	- I-4 legal state & local personnel extension A-3 RECS is tested monthly
TB N.2.c	A	5/5	- I-1 misinterpreted implications of RECS at local E A-5
JK N.2.d	AP	5/5	I-0 A-5
N.2.e.(1)	A	5/4	I-0 A-4
N.3.a	A	4/4	I-1 - covered under N.2.d above - DoE part. in Rad M Drills
N.3.b	A	4/4	
N.3.c	A	4/4	
N.3.d	A	4/4	
N.3.e	A	4/4	
N.3.f	A	4/3	A-3 I-1 overlooked page 5.2-2 and OPR 5.1.1 p.10d (see also ... to browser)
TB N.4	A	6/5	A-5 I-1 Misread OGS& comment
RF N.5	A	3/2	A-2 I-1 - Federal observation critique

JK 0.1	A		4/3	A-3	
RK <sup>TB</sup> 0.1b	I A	*	4/1	I-1 F.M.P. training - answers outside 2012.24. L11	
RK 0.2a	A		5/5	A-	
JK 0.4b	I	*	5/1	I- local, nice and fine	
JK 0.4c	A		5/5	A-5	
RK <sup>TB</sup> 0.4d	I	*	3/1	I-0	
RK <sup>TB</sup> 0.4f	A		4/3	A-4	
RK <sup>TB</sup> 0.4g	A		4/3	I-1 plant conditions	
TB <sup>TB</sup> 0.4h	A		4/3	A-5	
TB 0.4j	A		4/4	I-0	
TB, RK 0.5	A		4/4	A-2	
RK P.1	A*		4/4	I-1	
RK P.2	A*		4/4	A-3	
RK P.3	A*		4/4	I-1	Covered in 0.1.b
TB P.4	AP*		5/4	A-3	
TB P.5	A*		5/4	I-1	Covered in 0.1.b
P.6	A		4/4	A-3	
JK P.7	A		5/4	I-1	Covered in 0.1.b
TB P.8	I	*	4/1	A-4	
				I-1	Agreement necessary to replace plans used to be included
				I-1	Rev. dates on rev. pages - included on AP

ATTACHMENT 3

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

-----X  
: In the Matter of: :  
: : :  
LONG ISLAND LIGHTING COMPANY : Docket No. 5-322-0L-3  
: (Emergency Planning  
(Shoreham Nuclear Power Station, : Proceeding)  
Unit 1) :  
: :  
-----X

Federal Emergency Management Agency  
26 Federal Plaza, Room 1349  
New York, New York 10278

Friday, June 29, 1984

Deposition of ROGER B. KOWIESKI, called for  
examination by counsel for the Intervenor, Suffolk County,  
taken before Garrett J. Walsh, Jr., Court Reporter, begin-  
ning at 3:55 p.m., pursuant to notice.



1           A        Are you asking me off the top of my head.  
2 All elements, or --

3           Q        Well, if you can do it. But let's look at  
4 Exhibit 1. Mr. Fish from DOE is the first person listed,  
5 correct?

6           A        That is correct. But there are specific  
7 assignments that RAC members have, and they are responsible  
8 to review certain elements.

9           Q        Okay. Let's discuss that first. Do you make  
10 the assignments to members of the RAC Committee?

11          A        The assignments list came from National Office,  
12 you know, at least two or three years ago.

13          Q        Okay. We have had discussions about this with  
14 Mr. Keller, I think. Maybe Mr. Baldwin also. This is  
15 where there is a memorandum in the agency setting out what  
16 those agencies should review and a matrix, or something  
17 of that sort?

18          A        Your understanding is correct.

19          Q        So you do not specifically make any assignments  
20 to the agencies that are represented on the RAC?

21          A        I don't. However, I do encourage to go beyond  
22 whatever is specified on -- by the guidelines supplied by

1 National Office.

2 What I am saying by going beyond, to provide  
3 more comments on more elements than just those they are  
4 responsible for.

5 Q How do you encourage these members of the RAC  
6 to do that?

7 A You have to develop a certain relationship with  
8 RAC members, saying: Listen, okay, if you -- don't stop  
9 when you comment on -- when you read the plan, if you have  
10 a comment please comment, please provide comments on other  
11 elements if you can, because this would be very helpful when  
12 we meet later on and discuss the final document.

13 Q Did you encourage the members of the RAC for  
14 Revision 3 of the LILCO Plan to go beyond their areas of  
15 responsibility?

16 A I did not specifically encourage them to go --  
17 for Shoreham to go beyond. It is an understanding, it is  
18 a common practice in our Region that automatically provide  
19 comments not only on the elements that they are responsible  
20 for, that each time they see anything in the Plan that they  
21 feel it is important to know, to provide comments to me.

22 Q Do you know, Mr. Kowiesti, if in fact the members

1 of the RAC did, indeed, go beyond their areas of responsi-  
2 bility in conducting the review process for Revision 3 of  
3 the LILCO Plan?

4 A Some of them did.

5 Q Some of them not?

6 A That is correct.

7 Q Can you tell me which ones did, and which ones  
8 did not?

9 A It would take me probably a great amount of time  
10 to go and identify which RAC members did not go beyond what  
11 was required. I would have to go into my detailed comments.

12 Q Would you have to go back and look at the  
13 written comments received from the members?

14 A Yes, sir.

15 Q You can't do it sitting here today?

16 A No, sir.

17 MR. MILLER: Mr. Glass, has the County been  
18 provided with the matrix -- the memorandum to the agencies  
19 which we have been discussing that sets forth areas of  
20 responsibility?

21 MR. GLASS: I really don't know. I don't know  
22 if it was part of the FOIA material that came in under that,

1 testimony -- for example, look at page 9 of the FEMA testimony  
2 if you would, sir, which is Contention 20. If we were  
3 to go through this FEMA testimony contention by contention,  
4 could you identify for me the basis for the testimony  
5 regarding each contention.

6 For example, whether the basis would be the  
7 RAC Report or the LILCO Plan or personal judgment, or 0654,  
8 or any combination of those things?

9 A Well, I think I will be able to. For instance,  
10 Contention 20, the information that appeared here were  
11 provided by one of the RAC members, which again we did not  
12 identify. Marian Jackson, which is public information  
13 officer, and she is part of FEMA, Region II. And some of the  
14 input provided on public information and education were  
15 provided by Marian Jackson.

16 Q Mr. Kowieski, have you prepared notes regarding  
17 tabulation, compilation of comments received from members  
18 of the RAC and how those comments relate to each planning  
19 element of 0654?

20 A I have my personal notes.

21 Q And are you aware of the fact, Mr. Kowieski, that  
22 Mr. Baldwin and also Mr. Keller also prepared notes regarding

1 the review process and comments received from members of  
2 the RAC?

3 A Yes, I am.

4 Q Have you seen their notes in this regard?

5 A Mr. Glass provided me with a copy on Wednesday  
6 and today. On Wednesday Mr. Keller's comments, and today  
7 Mr. Baldwin's.

8 However, it should be -- the record should be  
9 clear we did work together on other occasions, and I would  
10 be surprised -- we agreed because that is what represented  
11 the factual data so there shouldn't be any disagreements.

12 MR. GLASS: It should be noted for the record  
13 I provided to Mr. Kowieski either after it had been provided  
14 to these members or concurrently to the parties sitting at  
15 this table.

16 BY MR. MILLER: (Continuing)

17 Q When you prepared these notes, Mr. Kowieski,  
18 were they prepared independently of Mr. Keller and Mr.  
19 Baldwin?

20 A I prepared my own notes, that is correct.

21 Q You didn't discuss your notes with Mr. Keller  
22 or Mr. Baldwin?

1           A       Yes, I did.

2           Q       You did.  When did you have this discussion?

3           A       It was Monday and Tuesday of this week.

4           Q       You and Mr. Keller and Mr. Baldwin discussed  
5 the notes you were preparing while you were preparing the  
6 notes?

7           A       Sure.

8           Q       Did you discuss just your notes, or did you  
9 discuss Mr. Keller's notes and Mr. Baldwin's notes as well?

10          A       I discussed -- we discussed the issues, and  
11 we were taking notes in our own way.

12          Q       Tell me how this process worked in preparing  
13 these notes.  Were you all together in one room?

14          A       That is correct.

15          Q       And you had the comments that had been received  
16 from the RAC members?

17          A       That is correct.

18          Q       And did you go through them element by element  
19 and then write down independent of one another your recollection  
20 as to what had been determined?

21          A       No, we discussed -- and when we discussed, we  
22 had the same understanding.  One after one.  The same

1 understanding of what transpired prior to and during the  
2 January 20th RAC meeting, and we were taking notes in our  
3 own way.

4 Q How is it, Mr. Kowieski, that the notes were  
5 independently prepared if you were in one room, sitting  
6 together, looking at the same material and participating  
7 in discussions with one another?

8 A What I am saying to you, that when we discuss  
9 each planning criteria, and when we agree that what  
10 actually happened during the RAC meeting on January 20th,  
11 Mr. Keller was taking notes in his own way and fashion,  
12 I was taking in my own way, and Mr. Baldwin was taking  
13 notes the way he wanted.

14 Q Well, do you have a copy of your notes with  
15 you?

16 A Yes, sir.

17 MR. MILLER: Mr. Glass would you like to  
18 distribute those notes.

19 MR. GLASS: At the moment, there has been  
20 no foundation laid for a need for those notes. It may  
21 be that Mr. Kowieski, utilizing the notes already provided  
22 by Mr. Keller and Mr. Baldwin may be able to answer your  
questions.

1           WITNESS KOWIESKI: I would like to just only  
2           -- for the record, I am very reluctant to release my notes,  
3           for Number 1, the very simple reason that while I was taking  
4           my notes I did not keep in mind the third -- the second  
5           party will have to read my notes. If someone, you sir,  
6           anybody else in this room would take a set of notes, my  
7           notes, cryptic notes, may misinterpret what I am saying.  
8           I feel that only I can understand and interpret these  
9           notes. That is the only reservation I have.

10           MR. MILLER: I understand that, sir. That is  
11           always the problem with notes, I suppose. We had the  
12           same discussion with Mr. Baldwin and Mr. Keller, and I  
13           will be glad to give you the opportunity to discuss these  
14           notes today, and we might even have the opportunity down  
15           the road.

16           MR. GLASS: At this point there has been no  
17           foundation. We are at a different stage with Mr. Kowieski  
18           than we were with certainly Mr. Keller in the fact that we  
19           now have available Mr. Keller and Mr. Baldwin's material,  
20           and Mr. Kowieski may be able to inquire. He is not using  
21           those notes right now to testify. They are his personal  
22           notes, and if he is able to answer your questions using



1 the other notes, I just don't see where you have any right  
2 to them.

3 MR. MILLER: Well, we will get to my right  
4 to them. Let me continue with some other things.

5 BY MR. MILLER: (Continuing)

6 Q Mr. Kowieski, before we actually get into the  
7 RAC report and the need for your notes, can you just describe  
8 for me the -- if you would, describe for me your involvement  
9 in the RAC review process for the LILCO Plan. If you will  
10 just give me a chronology beginning back in September, and  
11 I would appreciate the detail of what you went through.  
12 I understand it has been a lot of work.

13 Is that a chronology you are looking at?

14 A I do have my own chronology.

15 MR. MILLER: Do you know, Mr. Glass, if that  
16 document has been produced to the County?

17 MR. GLASS: Again, Mr. Kowieski has informed  
18 me these are his notes, they are typed. There are a number  
19 of other handwritten notes throughout. He has answered most  
20 of your questions up to this particular point. There is  
21 no foundation.

22 MR. MILLER: Well, my questions --

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MR. GLASS: The same thing -- we had Mr. Baldwin reading his calendar, and you had Mr. Keller reading his calendar. It is just the same type of thing.

MR. MILLER: I didn't request the other documents. I am requesting this chronology.

MR. GLASS: Let me look at the chronology. Do you want to proceed with another area.

MR. MILLER: Let me just proceed.

BY MR. MILLER: (Continuing)

Q Mr. Kowieski, if you could, because I am not looking for a particular date. I am looking for a general understanding of the process. If you could describe for me your involvement in the RAC review process, and how that process worked for the Shoreham plant, and I guess begin if you would, please, sir, back in September or October when the request came in to conduct a RAC review for the Shoreham plant.

A Shortly after Frank Petrone, the Regional Director, sent a letter to RAC members requesting a review of LILCO Transition Plan, Revision 1, shortly after I was in touch with each RAC member and two consultants. And I explained the target dates or deadline for submission

1 Q The comments were given to Mr. Acerno and Mr.  
2 Baldwin to work with, is that correct?

3 A That is correct.

4 Q And they put together, or they modified the report  
5 which had been prepared for Revision 1 to take into account  
6 the comments in Revision 3, correct?

7 A That is correct.

8 Q And then I think you said, Mr. Kowieski, you  
9 spent several days working with Mr. Baldwin and Mr. Acerno  
10 in going through the flip chart and the working document  
11 for the January 20th meeting, and in preparing for the  
12 January 20th meeting, correct?

13 A That is correct.

14 Q Now, during the January 20th meeting, could  
15 you describe to me how that meeting was conducted. You,  
16 as Chairman, conducted the meeting, correct?

17 A That is correct.

18 Q So how did you conduct the meeting?

19 A I opened the meeting. I stated the purpose of  
20 the meeting, and I proposed the agenda, and the agenda was  
21 to review, element by element, consolidated working document.  
22 I also stated that anybody who has objections, additional

1 comments, it is a good time, it is the time to modify, to  
2 change, and -- because we have to finalize the document.

3 So we went element by element through the  
4 working document, and questions or issues were raised, we  
5 discussed those issues, and if necessary, to make some  
6 adjustments.

7 Q Do you recall, Mr. Kowieski, whether there was,  
8 indeed, discussion on each and every element that was addressed  
9 in the RAC report?

10 A What you are asking here, I understand, if we  
11 discussed every element that we commented on?

12 Q I am asking if there was discussion of each  
13 and every NUREG 0654 element.

14 A That is what I stated on the record, that we  
15 discussed A through P, and we discussed every single element  
16 and comment, as it applies to NUREG 0654 planning criteria.

17 Q If, for example, Mr. Kowieski, the comments  
18 received from members of RAC were unanimous in terms of  
19 how they thought an item should be rated, did you nonetheless  
20 spend time discussing that element?

21 A To a lesser extent where there was a difference  
22 in the rating among RAC members.

1 Q And as you discussed each element of the RAC  
2 Report, Mr. Kowieski, there were various discussions by  
3 the various members of the RAC Committee, correct?

4 A And both consultants, Mr. Keller and Mr.  
5 Baldwin.

6 Q And as you thought those discussions came to an  
7 end for a particular element, did you say -- how did you  
8 decide it was time that we went to the next element.

9 A Very simple. I made ten or fifteen copies of the  
10 working document. I distributed it. Everybody -- everyone  
11 who was present at the meeting. In addition, a set of  
12 comments, our own comments submitted to me, plus there were  
13 two flip charts. The one flip chart, another document which  
14 is modification of comments in Revision 1.

15 So, if there was an issue raised by one of the  
16 RAC members, and this was the case, we would go back to the  
17 initial set of comments, restate each comment, go back to the  
18 Plan if necessary, verify that this particular element or  
19 statement is correct, the Plan reflects this. Then finally,  
20 we would agree on the final language, and there was  
21 interaction.

22 Nobody can recall every single word that was

1 Director released the document to National Office, was the  
2 same day I sent by express mail the document to all RAC  
3 members, including consultants.

4 Q So the RAC members received the RAC report, the  
5 final RAC report at the same time the document was sent  
6 to the NRC?

7 A To FEMA Headquarters.

8 Q February 21st?

9 A That is correct.

10 Q And there was no draft of any kind sent subsequent  
11 to the January 20th meeting, and prior to that February 21st  
12 date?

13 A That is correct.

14 Q Mr. Kowieski, are you capable of telling me  
15 for each element, NUREG element in the RAC report, those  
16 members of the Committee, including Messrs. Keller and  
17 Baldwin, who initially thought an item was adequate or  
18 inadequate?

19 MR. GLASS: He is just asking if you can do that.

20 WITNESS KOWIESKI: Sure.

21 BY MR. MILLER: (Continuing)

22 Q Could you tell me, then, for example, for

1 Element A.l.A, which members initially thought that item  
2 should be rated, 'adequate?'

3 MR. GLASS: He is only asking if you can  
4 identify them.

5 WITNESS KOWIESKI: For Element A.l.A., yes, sir.

6 BY MR. MILLER: (Continuing)

7 Q You can tell me that?

8 A Yes, sir.

9 Q Which members felt that item should be rated  
10 adequate?

11 MR. GLASS: At this point, this is the same  
12 situation that we are getting into. It is the same thing  
13 that has been decided by the Appeal Board, and I will instruct  
14 the witness not to answer that.

15 BY MR. MILLER: (Continuing)

16 Q Can you tell me, Mr. Kowieski, for Element A.l.A.,  
17 which members felt the item should be rated, 'inadequate?'

18 A One RAC. Which members?

19 Q Which members.

20 MR. GLASS: Don't give a name. Just answer  
21 his question.

22 WITNESS KOWIESKI: Four members rated this  
element 'inadequate,' one member rated this element to

1 be 'adequate,' provided LILCO will have legal authority  
2 to implement the Plan.

3 BY MR. MILLER: (Continuing)

4 Q Mr. Kowieski, do you have the information  
5 available to you to tell me which specific members of the  
6 RAC Committee, including Messrs. Keller and Baldwin,  
7 initially decided to rate an element 'adequate' or 'inadequate'?

8 MS. McCLESKEY: Objection. Asked and answered  
9 about two minutes ago.

10 MR. GLASS: It has been just asked and answered.

11 MR. MILLER: Can you answer my question, Mr.  
12 Kowieski?

13 WITNESS KOWIESKI: Will you please restate it?

14 BY MR. MILLER: (Continuing)

15 Q Do you have the information available to you to  
16 tell me which members of the RAC Committee initially believed  
17 particular NUREG elements should be rated, 'adequate' or,  
18 'inadequate?'

19 A By name for every single element?

20 Q Do you have the information available?

21 A Yes, sir.

22 Q You have that information to give me their names?



1           A       If I have, I have it in my office.

2           Q       Do you have the information available to you  
3 to tell me those members -- total members who wanted, or  
4 believed an item should be 'adequate,' and those total  
5 members who believed an item should have been rated,  
6 'inadequate?'

7           MR. GLASS: With the same objection as to  
8 form. Number one, I don't know at what point in time you  
9 are talking about, and number two, I am not clear whether  
10 you are talking about a particular element, whether you  
11 are talking about all hundred and some odd elements.

12          MR. MILLER: Mr. Kowieski, I am talking about  
13 all elements addressed in the RAC report, and I am talking  
14 about at the time the written comments in Revision 3 were  
15 received.

16                   That is, prior to January 20th meeting.

17           Do you have information available to you that  
18 indicates the number of members of the Committee for each  
19 element of the RAC Report who believed an item should be  
20 rated, 'adequate,' and the number of members of the Committee  
21 who believed an item should be rated, 'inadequate.'

22          MR. GLASS: The record can reflect that I am

1 providing Mr. Kowieski with Mr. Baldwin's notes, which was  
2 identified as Baldwin Exhibit No. 2, and Mr. Keller's notes,  
3 which were identified as Keller -- I think that was Keller  
4 No. 1, if I am correct.

5 MR. MILLER: I think so.

6 MS. McCLESKEY: I believe that is right.

7 BY MR. MILLER: (Continuing)

8 Q Do you have the information --

9 A Yes, sir.

10 Q Mr. Kowieski, was this the kind of information  
11 that you put together in preparing your personal notes?

12 A Yes, sir.

13 MR. MILLER: Mr. Glass, again I request  
14 production of Mr. Kowieski's notes.

15 MR. GLASS: There has been no foundation laid.  
16 Mr. Kowieski -- he has created personal notes. He is not  
17 utilizing those personal notes at this time to refresh his  
18 memory. You are asking him questions. He is utilizing two  
19 documents that have already been provided to you, and you  
20 have not reached the point where he is unable to answer  
21 your questions utilizing those documents.

22 I don't think you have established any need for

1 those personal notes.

2 BY MR. MILLER: (Continuing)

3 Q Mr. Kowieski, have you reviewed the notes of  
4 Mr. Baldwin and Mr. Keller prior to today?

5 A No, sir. I stated for the record.

6 Q So you had no chance or opportunity to see if  
7 the notes you prepared reflect the same information ascertained  
8 -- determined by Mr. Keller and Mr. Baldwin, is that correct?

9 A That is correct.

10 MR. MILLER: Well, Mr. Glass, in light of the  
11 fact that I am running out of time -- I have three minutes  
12 to go, I again request you produce Mr. Kowieski's notes,  
13 because otherwise going through these notes, Mr. Kowieski  
14 is going to have to sit here and read these notes for the  
15 first time.

16 MR. CLASS: I think I will stand by my present  
17 position at this time.

18 BY MR. MILLER: (Continuing)

19 Q Mr. Kowieski, are you able to tell me what the  
20 members of the RAC Committee did in preparing their comments  
21 that were submitted prior to the January 20th meeting?

22 A I don't understand your question.

1 Q Well, you have told me that what you did in your  
2 review with respect to the RAC review process was that you  
3 reviewed the LILCO Plan, portions and parts of the LILCO  
4 Plan, correct?

5 A At what point? At a certain point, yes.

6 Q Okay. Now, those members of the RAC Committee  
7 who provided comments that were used at the January 20th  
8 meeting, do you know what they did; for example, what they  
9 looked at and reviewed in order to make determinations  
10 as set forth in their comment that was sent to your  
11 attention?

12 A I can tell you the four volumes of the LILCO  
13 Transition Plan, and NUREG 0654. They used their professional  
14 judgment, expertise, based on their educational background  
15 and experience gained in the past.

16 Q Do you specifically know that the only thing the  
17 members of the Committee used in their review were the four  
18 volumes of the LILCO Plan?

19 A If I know?

20 Q Yes, sir.

21 A They were requested to provide comments on the  
22 LILCO Transition Plan, Revision 3.

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Q Do you know, though, what they actually did do in providing their comments to you for use in the RAC review process?

A They did not advise me otherwise when they submitted comments to me.

Q I want to repeat my question. Do you know, specifically know, what members of the Committee did in preparing their comments on the LILCO Plan that was sent to you?

A They --

MR. GLASS: This is getting back to the same situation which was gotten into in the three prior instances. If you are asking Mr. Kowieski was he present, and did he watch what each individual did, so that he can then say for a fact that he saw the person open and read all four volumes and NUREG 0654, you can understand his hesitancy to be able to respond to such a question.

BY MR. MILLER: (Continuing)

Q I am sure, Mr. Kowieski, that you did not watch the members of the Committee in what their review consisted of, is that correct?

A No, I did not sit in their office and watching

1 them revise the LILCO Transition Plan, Revision 3, that  
2 is correct.

3 Q Did you ever specifically ask any member of the  
4 Committee, including Messrs. Keller and Baldwin, what they  
5 did in reaching their conclusions and judgments regarding  
6 the LILCO Plan?

7 A At the meeting I asked -- at the January 20th  
8 meeting, okay, if, for instance, an issue came up, if they  
9 review, for instance, Appendix A. Basically I would  
10 insult their intelligence by asking, say: Have you reviewed  
11 the Plan. Did you base your comments on the Plan?

12 Because, you know, those people are professional  
13 individuals, and are being designated by their respective  
14 agency to assist FEMA, and I have to maintain a certain  
15 relationship. I cannot insult them by asking them a very  
16 obvious question.

17 Q Yes, sir, I understand. Did you ever specifically  
18 ask any member of the Committee, however, if they reviewed  
19 anything other than the LILCO Plan?

20 A No, sir.

21 Q The answer is, 'no?'

22 A Yes, sir.

1 MR. GLASS: He is asking you at this point did  
2 you ever ask any of the RAC members if they ever reviewed  
3 anything other than the LILCO Plan. What is your response?

4 WITNESS KOWIESKI: Other than -- no.

5 BY MR. MILLER: (Continuing)

6 Q Do you know, Mr. Kowieski, whether command and  
7 control issues are addressed in NUREG 0654?

8 A Sure.

9 Q Do you know whether those issues are addressed  
10 in the RAC report?

11 A Yes, sir.

12 Q Can you tell me why FEMA is submitting no  
13 testimony on Contentions 11 and 15?

14 A I was advised by my counsel not to submit  
15 testimony on those particular contentions.

16 Q Do you know why?

17 A It is not my decision. It is counsel who is  
18 making the decision.

19 Q Mr. Kowieski, have you at this time been asked  
20 to provide any testimony on behalf of FEMA regarding training  
21 issues?

22 A I understand that we eventually will provide

1 compensating plan, provided our comment, and as a result  
2 of it, obviously later on the exercise came about.

3 The letter was different.

4 Q Mr. Kowieski, you have told me that you have  
5 the information available to you to identify the members  
6 of the RAC Committee who initially in their comments to the  
7 Committee believed items should be rated 'adequate' and/or  
8 'inadequate' correct?

9 A That is correct.

10 Q Now, I would like you, Mr. Kowieski, to contention  
11 by contention -- I am sorry. I would like for you, if you  
12 would please, using the RAC Report, element by element, to  
13 tell me the members of the Committee who believed that  
14 the rating finally determined in the RAC Report who initially  
15 believed that was a correct rating?

16 MR. GLASS: I object. You are trying to get  
17 through the back door the same information that you were  
18 tried to get through, and went up to the Appeal Board. You  
19 are trying to have him identify preliminary statements that  
20 were contained on the original documents which were held to  
21 be subject to privilege. You are trying to obtain the  
22 same, exact information. You are trying to have him identify



1 which individual said, 'adequate,' and which individual  
2 said, 'inadequate' on those preliminary documents, and the  
3 Appeal Board has upheld FEMA's position. And I do not see  
4 anything at this point which indicates you are entitled to  
5 that information, or that there is any need for that  
6 information.

MS. McCLESKEY: In addition, it is almost a  
quarter to seven.

MR. MILLER: I understand what time it is.  
Mr. Kowieski, I am going to ask the question again, and then  
your counsel can instruct you one way or the other.

BY MR. MILLER: (Continuing)

Q What I am asking is for you to tell me, element  
by element, based upon the final RAC report, those members  
of the RAC who in their initial comments believed that the  
rating that was finally derived, following the January 20th  
meeting, was in fact the rating they suggested in their  
written comments prior to January the 20th?

MS. McCLESKEY: Mr. Miller, do you intend to  
abide by the agreement that we made that the State and LILCO  
were to have an opportunity to question Mr. Kowieski before  
seven o'clock?

MR. MILLER: I don't think I have made any agreement, because I disagree with this whole process of cutting off at seven o'clock.

MS. McCLESKEY: Do you intend to allow the State and LILCO to ask Mr. Kowieski any questions before seven o'clock.

MR. MILLER: It is not that I am allowing or disallowing. I am not disallowing questions by the State or LILCO.

MS. McCLESKEY: Well, are you going to conclude your questioning right now, at a quarter to seven.

MR. MILLER: I am in the middle of a question right now.

MR. GLASS: As to this particular question, it is my understanding -- correct me if I am wrong -- that you are asking him to identify for you the positions of the individual RAC members as provided on their comment sheets to the RAC Chairman prior to the January 20th meeting. If that is what you are instructing him to do, I am instructing the witness not to answer your question.

MR. MILLER: Is your instruction the same if I asked Mr. Kowieski to identify representatives -- if I asked Mr. Kowieski to identify the agencies represented?

1 MR. GLASS: That is the same question. We  
2 have -- it is a very simple mathematical formula.

3 MR. MILLER: Was your instruction not to answer  
4 the question?

5 MR. GLASS: Let me finish my statement. It is  
6 a very simple mathematical formula you have. We have  
7 already provided you the names of the agencies and who  
8 the individuals are, so if he was to provide the answer  
9 to your sencond question, he would in effect be providing  
10 the same answer.

11 And, therefore, I am instructing the witness  
12 not to answer. I am concerned now that we have two other  
13 parties who have expressed an interest --

14 MR. MILLER: I understand. Let me try to wrap  
15 it up. Let me try one more time so that we have a complete  
16 understanding of what my question is.

17 BY MR. MILLER: (Continuing)

18 Q Mr. Kowieski, what I am asking you is would you  
19 identify for me those members of the RAC who agreed and  
20 disagreed with the -- let me start again.

21 I am asking you to identify those members of the  
22 RAC, including Messrs. Keller and Baldwin, who at the time

1 their comments were submitted for the January 20th meeting,  
2 agreed and disagreed with the rating that was finally assigned  
3 in the RAC Report as issued by FEMA to the NRC?

4 MR. GLASS: I am having trouble understanding  
5 your question. If your question is: Did the members agree  
6 -- to finally agree with all the conclusions, Mr. Kowieski  
7 has stated a number of times that there was concurrence.

8 MR. MILLER: That is not my question. I am  
9 talking about the position of the RAC members, including  
10 Messrs. Keller and Baldwin, in their written comments or  
11 otherwise, that were submitted prior to the January 20th  
12 meeting, I want to know the positions of the members of the  
13 Committee with respect to whether they were in agreement  
14 or disagreement with the rating finally derived and set  
15 forth in the RAC Plan issued to the NRC.

16 MR. GLASS: I am instructing the witness not  
17 to answer the question. You have had Mr. Keller here; you  
18 have had Mr. Baldwin here. You took the opportunity with  
19 Mr. Keller to inquire. He gave you a listing of what his  
20 original ratings were, so you have that information. And  
21 I am instructing the witness not to answer at this point.

22 MS. McCLESKEY: Mr. Miller, I object to the

1 question. It is the same question you have been asking for  
2 half an hour, and it is clear at this point that you insist  
3 on repeating it to take up the remaining ten minutes of time  
4 that this witness will be here, and to disallow LILCO and the  
5 State an opportunity to question Mr. Kowieski.

6 MR. MILLER: Ms. McCleskey I would appreciate  
7 your not trying to interpret my motives. It upsets me. It  
8 is unprofessional, and I think it is uncalled for.

9 BY MR. MILLER: (Continuing)

0 Q Mr. Kowieski, you have been instructed not to  
1 answer my question, and of course I have to abide by that.  
2 But I want to make it clear for the record that my opportunities  
3 to question Mr. Keller and Mr. Baldwin went to their involvement  
4 in the RAC.

5 Mr. Kowieski is here as Chairman of the RAC. He  
6 had the information available to him to tell me the members  
7 and their positions on the RAC; Mr. Keller and Mr. Baldwin  
8 both made clear they were not in a position to give me that  
9 information.

10 So, there is a difference.

11 MR. GLASS: You made your statement, and I  
12 stand by my statement.

1 MR. MILLER: I will conclude my questions  
2 with another statement. The statement is that I am not  
3 finished my questioning with Mr. Kowieski. I very much  
4 would like to continue my questioning of Mr. Kowieski. I  
5 do not feel I have been given adequate opportunity in light  
6 of the fact that Mr. Baldwin did take much longer than  
7 anticipated, and in light of the fact of the importance  
8 of Mr. Kowieski to this proceeding, and I, therefore, would  
9 request again that you provide me some additional time, Mr.  
10 Glass.

11 I think perhaps another half hour or so I  
12 would finish my questions, and if you don't provide me the  
13 additional time, all I can do is tell you I reserve the right  
14 to call back Mr. Kowieski. I will not say that this deposition  
15 concludes today. And if we decide to call back Mr. Kowieski,  
16 and if you don't produce him voluntarily, that is an issue  
17 we would take to the Board.

18 MR. GLASS: I will state for the record that we  
19 had an agreement. That the agreement was -- and this was  
20 the agreement -- that we were not going to make a motion or  
21 insist upon, bring the issue to the Board that our witnesses  
22 only be deposed as a panel. We explained to you our concerns

1 both on and off the record for that.

2 In exchange, the agreement was that the deposition  
3 would take place in New York, and it would be limited to two  
4 days, two business days.

5 We then went through -- and this has all been  
6 negotiated -- we asked that we be allowed to have Mr. Baldwin  
7 go first and Mr. Keller go second this Friday. You agreed  
8 to that, but indicated that you had more questions to spend  
9 with Mr. Kowieski than with Mr. Baldwin, and I agreed  
10 -- and as I remember our discussion, I agreed to go to  
11 six o'clock.

12 You took longer with Mr. Baldwin, and that was  
13 just because -- you were asking questions, I was not, and  
14 now we have reached the situation where I have already provided  
15 Mr. Kowieski an additional hour beyond the time. I think we  
16 have done everything that we can comply. We have also provided,  
17 you know, those two sets of list for Mr. Baldwin and Mr.  
18 Keller, which I think certainly expedited and saved time in  
19 the cross examination of those two witnesses.

20 If you don't have any other statement, we will  
21 move on to the State of New York.

22 MR. MILLER: We both have made our statements, and

1 there would no reason for me to repeat anything.

2 MS. McCLESKEY: I would like the record to show  
3 that counsel for Suffolk County is conferring with Counsel  
4 for New York State.

5 MR. MILLER: The record can certainly reflect  
6 anything it wants to, Ms. McCleskey. I don't understand  
7 why you feel compelled to point out these things, but feel  
8 free to point them out.

9 MR. GLASS: Mr. Zahnleuter, are you ready --

10 MR. ZAHNLEUTER: I am sorry. I was listening  
11 to Ms. McCleskey's point, and I wasn't listening to Mr.  
12 Miller, so I don't even know what he told me.

13 I do not wish to place any time constraints  
14 upon you, Mr. Miller, in conducting the cross examination  
15 that you have a right to or that you want to. If I have  
16 a time allotment, I am free, and I feel that I would like  
17 to give it to you if you would like to use that time  
18 allotment.

19 MR. MILLER: What is your position as to Mr.  
20 Kowieski's availability beyond seven o'clock.

21 MR. GLASS: You are pushing him, you know, to  
22 this time. Let me just confer off the record.



1 (Mr. Glass confers with Mr. Kowieski)

2 MR. GLASS: The Court Reporter has graciously  
3 agreed to stay, so he can make a later plane. We can work  
4 it out that we can give you another ten minutes, and then  
5 give the County some time to wrap up. New York State doesn't  
6 appear to have -- I hope I am not putting words there -- but  
7 doesn't appear to have any questions. We can proceed that  
8 way.

9 MR. MILLER: I appreciate your offer of ten  
10 minutes. I do not feel I can finish in ten minutes. Perhaps  
11 in half an hour.

12 MR. GLASS: It would just be prohibitive  
13 not only on Mr. Kowieski, but as well for the Court  
14 Reporter, because I have to give the other parties an  
15 opportunity.

16 MR. MILLER: I stick by my statement, then,  
17 that I reserve my rights to continue this deposition.

18 MR. GLASS: I don't want to waste time on the  
19 record. We can argue later on whether you have those rights  
20 to reserve.

21 MR. ZAHNLEUTER: Are you asking questions now  
22 for ten minutes?

ATTACHMENT 4



1 interpretation?

2 A Aside from the, as you characterized it, mechanical  
3 gathering. That is my understanding, yes.

4 Q And Mr. Kowieski then reviewed that working  
5 paper and made the final decision as to the verbiage and  
6 so forth that went into the position paper presented on  
7 January 20?

8 A That is my understanding, yes.

9 Q And from looking at your notes, Mr. Keller, or  
10 just from your recollection, is it fair to say that you are  
11 unable to identify for me which members of the committee  
12 were in the minority in terms of feeling an issue  
13 should be either rated adequate or inadequate?

14 A From these notes, aside from myself, I cannot  
15 identify any individuals.

16 Q Do you know, Mr. Keller, if anyone else has  
17 put together this sort of a tabulation of comments and  
18 opinions of the RAC committee?

19 A Yes.

20 Q Who else has done that?

21 A Mr. Baldwin and Mr. Kowieski.

22 Q Did they also do it just yesterday?

1 breakdown in almost every region I have been in, that this  
2 was distributed from FEMA headquarters. And it has been  
3 extant for several years.

4           So I don't know who did it, but is my understanding  
5 it came out of FEMA headquarters.

6           Q     Are you saying that historically people in the  
7 RAC committee just know what areas they are going to  
8 review?

9           A     Because these documents exist and have existed for  
10 some time, long time members of RACs who have reviewed  
11 numerous plans, I do believe, know that this is mine and that  
12 is not mine. No one is precluded from making an  
13 evaluation of any element, but there are certain elements  
14 which have greater emphasis in certain agencies, and those  
15 are the ones that they are expected to answer.

16          Q     Are all the members of the RAC committee for  
17 Region II longstanding members of the committee who have  
18 reviewed other plans, to your knowledge?

19          A     Yes. I better be careful with this one. I do  
20 know they have been involved at least as long as I have, which  
21 has been all the reviews we have had. One of the members in  
22 the agency had been on the RAC, had reviewed plans, left the

1 have been rated adequate?

2 A I made no comment. I did not.

3 Q You didn't participate in any way?

4 A No. I think I did participate in the discussion.

5 Q And in what way did you participate, for or  
6 against an adequate rating?

7 A For the adequate rating. This plan replaces  
8 state and local, and into the intent of 0654, C.2.A, this  
9 plan meets that intent.

10 Q So going into the discussion of that particular  
11 item, C.2.A, four individual members' comments had  
12 argued for an inadequate rating?

13 A That is correct. And that, I presume, was the  
14 basis of the working position of an "I" to begin with.

15 Q So that, Mr. Keller, so that four of the  
16 individual members' comments going into the January 20th  
17 meeting felt the item should be rated inadequate, the item  
18 ended up being rated adequate, and that was due to, as you  
19 say, discussion among the members of the committee?

20 A That is correct. And I tried to give you the basis  
21 of that discussion.

22 Q If I were to ask, Mr. Keller, the four members who

1 felt that item should have been rated inadequate going into  
2 the January 20th meeting, could you identify those members?

3 A I have told you numerous times, unless it is  
4 myself, I can make no identification of people based on these  
5 notes.

6 Q From your recollection can you make an identifica-  
7 tion?

8 A I cannot.

9 Q Could you make an identification from your  
10 recollection from having been at the meeting of any members  
11 and the particular positions taken by members of the RAC  
12 committee?

13 A Occasionally, certainly not in every position,  
14 but I can remember some positions that were taken, yes.

15 MR. MILLER: Why don't we take a break.

16 (Recess.)

17 BY MR. MILLER:

18 Q Mr. Keller, after the January 20th meeting  
19 where the consensus was arrived at regarding the RAC  
20 review, is it fair to say that your next involvement  
21 with the Shoreham plant came in preparing your written  
22 testimony on behalf of FEMA?

ATTACHMENT 5



1 UNITED STATES OF AMERICA

2 NUCLEAR REGULATORY COMMISSION

3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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

9  
10  
11  
12 Federal Emergency Management Agency  
26 Federal Plaza, Room 1349  
13 New York, New York 10278

14 Friday, June 29, 1984

15 Deposition of THOMAS E. BALDWIN, called for  
16 examination by counsel for the Intervenor, Suffolk County,  
17 taken before Garrett J. Walsh, Jr., Court Reporter, begin-  
18 ning at 9:37 a.m., pursuant to notice.  
19  
20  
21  
22

1 thirty-one I think, could you give me an estimate as to the  
2 number of the thirty-one total implementing procedures, the  
3 number that you have read in their entirety; is that possible?

4 A Yes. I can estimate that. From tab to tab,  
5 on the order of five to eight. And the others I have  
6 cross-checked with when we have been in discussions and  
7 examined those procedures and done counts of emergency  
8 workers, et cetera.

9 Q Let me ask you this, Mr. Baldwin. Do you  
10 specifically know whether any member or members of the RAC,  
11 including Mr. Keller for purposes of this question, have  
12 specifically read cover to cover the implementing procedures  
13 of the LILCO plan?

14 MR. GLASS: Let me see if I understand this  
15 question. Do you mean that all the members in total would  
16 have, combined, read them all, or what each -- that there  
17 was at least one individual who read them all?

18 I'm a little confused on that question.

19 MS. MC CLESKEY: I have the same confusion.

20 BY MR. MILLER: (Continuing)

21 Q Let me break it down, Mr. Baldwin. If I were  
22 to go through the RAC members and ask you about each member

1 specifically, could you tell me whether that member had  
2 specifically reviewed and read the implementing procedures  
3 of the LILCO plan?

4 A All of the RAC members, all of the procedures?

5 Q If I were to go through each member one at a  
6 time and asked you?

7 A No.

8 Q You could not tell me whether that particular  
9 member had reviewed the implementing procedures?

10 A No. I could not.

11 Q Are you able to tell me whether you specifically  
12 know that the RAC Committee in total, if you will, all the  
13 members, have reviewed the LILCO procedures, all the LILCO  
14 procedures?

15 In other words, if one person reviewed ten and  
16 another person reviewed eight, and so forth, so that when  
17 all was said and done that the totality of the implementing  
18 procedures had been reviewed?

19 Can you specifically tell me whether that has  
20 been done by the RAC?

21 A No. I cannot tell you whether all of these  
22 procedures have been read cover to cover.

Q Can you tell me whether all the procedures have been reviewed by the RAC?

Do you specifically know that?

A I do not specifically know that, no.

Q Now, let's go back to where we were a few minutes ago. With respect to the procedures which you said you did not specifically review, the listing that you gave to me, can you tell me the members of the RAC, including Mr. Keller for purposes of this question, who reviewed those procedures you did not review?

MR. GLASS: He has already answered that question.

WITNESS BALDWIN: No, I can't. Again, I can't tell which RAC members have read which procedures with the exception of when a reference to a particular procedure is reflected in the written comments that have been supplied to us or when they mention it and it appears in my notes from a RAC meeting.

BY MR. MILLER: (Continuing)

Q Mr. Baldwin, would you look at Appendix A of the plan? Before we get to Appendix A, let me ask you, do you specifically know whether the members of the RAC,

1 including Mr. Keller for purposes of this question, have  
2 reviewed the LILCO plan, the one volume plan; do you know  
3 that?

4 A Are we talking about -- we are talking about the  
5 Appendix?

6 Q I'm sorry. I'm asking you about the LILCO plan,  
7 the plan itself --

8 A This is it.

9 Q -- do you specifically know whether the members  
10 of the RAC, including Mr. Keller, have read and reviewed  
11 the LILCO plan volume? I'm talking about the one volume.

12 A RAC members typically have a matrix, if you  
13 will, of assignments which are keyed to the NUREG 0654  
14 criteria document. And their agencies review the elements  
15 of the plan with regard to those to which they are assigned.

16 Some review particular elements. Some concentrate  
17 on a few particular elements and provide additional comments,  
18 and others provide less than full comments.

19 Q Are you saying, Mr. Baldwin, that some members  
20 of the RAC would not have reviewed the entire one volume  
21 plan?

22 A Yes.

1 Q Now, do you know --

2 A Now, I can't speak as to whether or not they  
3 have done that or not. In consolidating the comments, I  
4 am aware of the elements that we got responses on and how  
5 many responses we got from various RAC members in total,  
6 so that I know the number that have provided us with  
7 comments on each element and I know numerically how many  
8 rated it in various ways.

9 Q Yes, sir. But, having received a comment on  
10 a particular element of NUREG 0654 would not necessarily  
11 mean that that RAC member had read the LILCO plan; isn't  
12 that correct?

13 A That's correct.

14 Q So, back to my question --

15 A It would not necessarily mean that.

16 Q So, back to my question. Do you know whether  
17 any member of the RAC, including Mr. Keller for this  
18 question, other than yourself has specifically reviewed the  
19 entire LILCO plan?

20 A Well, I --

21 Q I'm talking about the one volume plan.

22 MR. GLASS: Mr. Miller, at this point we are

1 getting into a very difficult area. It's a very strange  
2 area. I look around the table here , everybody has shoes  
3 on this morning but I could not swear that every single  
4 person at this table put on their shoes because I was not  
5 there to see every single person do that. And I think  
6 this is the same type of problem that Mr. Baldwin is find-  
7 ing himself in.

8 MR. MILLER: I appreciate Mr. Baldwin's problem.  
9 I'm trying to make this as simple as I can.

10 My problem is that we have been given specific  
11 witnesses that we are entitled to depose. I'm trying to  
12 find out through the witnesses we have been provided, what  
13 they know about what was done in the RAC review process.  
14 And I think those terms I'm trying to explore with Mr.  
15 Baldwin now, what he knows about what other members of the  
16 RAC did.

17 MR. GLASS: And I think he has explained these  
18 document comments. He has explained he has reviewed the  
19 comments. He has explained the fact that the comments,  
20 he has checked them, and they seem to make sense, the  
21 person couldn't have just made it up from old cloth.

22 MR. MILLER: That's fine. I understand all of

1 that. I'm trying to find out though what Mr. Baldwin  
2 specifically knows. I think I'm entitled to do that.

3 MR. GLASS: I'm not objecting to it. I just  
4 want to let you be aware of the problem as I see it. It's  
5 a practical problem that any individual is very careful,  
6 and he is not flip in his answers. He is responding to  
7 the questions fully.

8 WITNESS BALDWIN: I do not have direct immediate  
9 knowledge of which RAC members have read exactly what  
10 portions and how extensively their review has been con-  
11 ducted.

12 I have reviewed their written comments and  
13 consolidated those, and attended the RAC meeting of the  
14 20th at which point everyone seemed to be quite knowledgeable  
15 in this plan and able to speak to a wide variety of issues  
16 that came up.

17 BY MR. MILLER: (Continuing)

18 Q Mr. Baldwin, it's fair to say though that you  
19 just don't know what other members of the RAC Committee,  
20 including Mr. Keller for purposes of this question, have  
21 done with respect to their review of the LILCO plan; is  
22 that right?



42  
1 A I know which elements various people have re-  
2 viewed and supplied us comments on.

3 Q Yes, sir. But do you know what they did to  
4 reach their conclusions regarding those elements of  
5 NUREG 0654?

6 A It's impossible for me to get inside of their  
7 head and to go through their thinking process.

8 Q I'm not asking you about their thinking process.  
9 I'm asking you, do you know what these people did with  
10 respect to reaching their conclusions and judgments regard-  
11 ing the LILCO plan?

12 MR. GLASS: The witness seems to be having some  
13 problem. Can you give us a definition to help us in some  
14 way?

15 I'm not trying to be difficult, Mr. Miller. I  
16 just think you are in a very hard area and any assistance  
17 you can provide the witness will be appreciated.

18 MR. MILLER: Okay.

19 BY MR. MILLER: (Continuing)

20 Q Mr. Baldwin, do you know what members of the  
21 RAC, including Mr. Keller, reviewed to reach their  
22 conclusions and judgments as set forth in their comments?

1           A       Yes. They reviewed the plan, the implementing  
2 procedures and the Appendix A of the evacuation study.

3           Q       And you specifically know that each member of  
4 the RAC and Mr. Keller did that; is that correct?

5           A       Yes. I know that each reviewed those various  
6 parts in order to be able to supply us with their comments.

7           Q       Now, can you tell me what parts or portions of  
8 each of the four volumes of the total LILCO plan the members  
9 of the RAC and Mr. Keller reviewed?

10          A       I have no specific direct knowledge of those  
11 parts which each member -- how each member went about  
12 their task. I have no direct knowledge of how each one went  
13 about reviewing this entire set of four documents, four  
14 volumes.

15          Q       Do you know, Mr. Baldwin, if any member of the  
16 RAC, or Mr. Keller, reviewed anything other than the four  
17 volumes of the LILCO plan in setting forth in reaching  
18 conclusions regarding the adequacy of the LILCO plan?

19          A       There was nothing else that I'm aware of that  
20 was submitted to us for review.

21          Q       So, as far as you are aware, they reviewed  
22 nothing other than portions or parts of these four volumes;

1 is that correct?

2 A That's correct.

3 Q Is it possible, Mr. Baldwin, that members of the  
4 RAC and Mr. Keller could have reviewed other material to  
5 reach their conclusions?

6 A What do you mean by other material?

7 Q Other material.

8 MS. MC CLESKEY: Mr. Miller, what are you  
9 talking about?

10 MR. MILLER: I'm talking about other material.  
11 I want to try to do this as fast and as quickly as I can,  
12 but there are certain words in the English language such as  
13 "did" and "other material" which I don't think need defin-  
14 ing.

15 BY MR. MILLER: (Continuing)

16 Q Mr. Baldwin, are you having trouble with my  
17 question?

18 MS. MC CLESKEY: He said he was. He said he  
19 didn't understand what you were talking about.

20 WITNESS BALDWIN: The other material -- by that  
21 I mean, the RAC was asked by FEMA to review the LILCO  
22 Transition Plan consisting of the plan, two volumes of

1 implementing procedures and Appendix A, the evacuation plan.  
2 And that's all that I'm aware of that the RAC Committee was  
3 asked to evaluate.

4 So there are no other materials that were  
5 submitted for review.

6 BY MR. MILLER: (Continuing)

7 Q Yes, sir. I understand that. But there would  
8 be other materials that perhaps members could have reviewed;  
9 isn't that correct? For example, transcripts of the hear-  
10 ings, the Shoreham hearings. That's other material, okay.

11 MR. GLASS: That's what we were asking, Mr.  
12 Miller, to help him out.

13 BY MR. MILLER: (Continuing)

14 Q Other written prefiled testimony submitted by  
15 parties to the proceeding. That would be other material.  
16 There is an array of other material related to this pro-  
17 ceeding.

18 A I see what you are saying.

19 Q Now, to your knowledge, did any member of the  
20 RAC, including Mr. Keller for purposes of this question,  
21 review any such other material?

22 A I see. No. To my knowledge, no one of the RAC

1 members read any of that other material in the process of  
2 doing the RAC review.

3 Q I asked you a minute ago to look at Appendix A  
4 and we got sidetracked. Would you look at Appendix A,  
5 the Table of Contents?

6 A (The witness is looking at document.)

7 Q Mr. Baldwin, can you, by looking at that Table  
8 of Contents, which is rather sketchy, I guess, can you  
9 tell me what portions of Appendix A you specifically review-  
10 ed?

11 A No, I cannot, because this Appendix is rather  
12 difficult to follow for a number of reasons. The Table of  
13 Contents is only one part of it. But there are a large  
14 number of maps that separate the pages. You almost --  
15 you have to go through it page by page and find things in  
16 that fashion.

17 MR. GLASS: If you had your own set of the plan,  
18 which I understand you did not bring the whole set of the  
19 plan, would you be more likely to be able to answer his  
20 question as it relates to Appendix A and as to the pro-  
21 cedures?

22 WITNESS BALDWIN: Well, Appendix A is the piece

A Correct.

Q And, is it fair to say --

A And in my judgment, I tried to reflect the views that were coming across from those that provided the comment.

Q Okay. Let me ask you, do these notes reflect, Mr. Baldwin, the members who provided the rating?

For example, let's look at A.2.A. You have indicated in your notes that three RAC members indicated initially the item should be rated inadequate; correct?

A Correct.

Q Now, can you tell me, based upon these notes, would you be able to tell me who those three members were?

MR. GLASS: Just listen to the question. He is just asking you whether you could do that.

WITNESS BALDWIN: No. I cannot tell you who, what agencies, provided -- which agencies and/or contractors represent these three.

BY MR. MILLER: (Continuing)

Q Let me ask you, Mr. Baldwin, outside the scope of looking at these notes, can you today tell me, would you be able to tell me who the three individuals were that made the judgment that Item A.2.A was inadequate?

1           A       Outside the scope -- could you rephrase your  
2 question?

3           Q       My first question was, if you look at your notes,  
4 do these notes provide you a way of being able to say: Yes,  
5 I know those three RAC members and they are as follows?

6                    You have told me based on these notes you can't  
7 do that.

8           A       That's true.

9           Q       I'm asking now, irrespective of these notes,  
10 are you able to tell me, for example, the three members of  
11 the RAC who initially thought Item A.2.A was inadequate?

12                   MR. GLASS: He is just asking you do you  
13 remember who those three are. That's the only question,  
14 without going any further.

15                   WITNESS BALDWIN: We come back to the issue of,  
16 do I recall it. I do not recall it. No. I do not have a  
17 recall on A.2.A of these agencies that represent the three  
18 I's, which they aren't.

19                   BY MR. MILLER: (Continuing)

20           Q       Which they are?

21           A       Oh, I'm sorry. I do not recall which agencies  
22 comprise those three I's.

1 Q Mr. Baldwin, how many agencies are represented  
2 on the RAC?

3 A I have to think about that. Department of  
4 Commerce is not represented on the RAC right now, is not  
5 participating.

6 Q Did they participate in the Shoreham RAC?

7 A No.

8 Q Okay.

9 A Department of Transportation, Department of  
10 Energy, NRC, FEMA, U. S. Department of Agriculture, Food  
11 and Drug Administration.

12 Q What about EPA?

13 A Yes, EPA.

14 Q I have seven that you have listed.

15 MR. GLASS: We could refresh his memory by  
16 giving him a section of 44 CFR if you want us to do that.

17 BY MR. MILLER: (Continuing)

18 Q Well, let me ask, Mr. Baldwin, are there eight  
19 different agencies on the RAC, or were there eight different  
20 agencies represented on the RAC for Shoreham?

21 A Just a moment. I'm trying to make a list.  
22



1 MS. MC CLESKEY: I would like to note for the  
2 record that a list of the agencies that were represented  
3 on the RAC were sent to counsel for Suffolk County about a  
4 month ago by counsel for FEMA.

5 WITNESS BALDWIN: The list is FEMA, DOE, NRC,  
6 USDA, FDA, DOT, EPA, and there are two outside contractors  
7 that supplied comments, myself from Argonne Laboratories,  
8 ANL is the abbreviation, and Joseph Keller from Idaho  
9 National Engineering Laboratory, INEL.

10 BY MR. MILLER: (Continuing)

11 Q Going back to the one example we seem to have  
12 focused on, Mr. Baldwin, the A.2.A element indicates eight  
13 comments were received.

14 Can you tell me which representative of the RAC  
15 did not submit a comment on that particular element?

16 A No.

17 Q Are you saying, based on these notes, you cannot  
18 tell that information?

19 A No, I can't tell that information.

20 Q Do you have an independent recollection as to  
21 which agency, which individual, between yourself and Mr.  
22 Keller, did not submit a comment on that element?

1 A No, I don't.

2 Q Mr. Baldwin, is it fair to say that if we went  
3 through this complete listing of seven pages of your notes,  
4 would you have any independent recollection as to particular  
5 members who presented comments to the RAC with respect to  
6 the various elements of NUREG 0654?

7 A I have a recollection of the substance of the  
8 comments that were submitted.

9 Q Yes, sir. Not the substance. Can you tell --  
10 would you be able to tell by looking at these notes, for  
11 example, which agencies and whether you and Mr. Keller  
12 presented comments for each element of NUREG 0654 reflected  
13 on your notes?

14 MR. GLASS: I don't understand that question.  
15 I think you have a compound question there.

16 MR. MILLER: I'm trying to do this the shorthand  
17 way.

18 BY MR. MILLER: (Continuing)

19 Q Mr. Baldwin, what I'm trying to get at, look at  
20 that very first element, A.1.A. And that reflects five  
21 comments were received and I'm asking, do these notes,  
22 first of all, reflect which agencies or individuals of the

1 RAC presented these five comments?

2 A No.

3 Q And do you have any independent recollection?  
4 Are you able to tell me which five agencies or individuals  
5 provided these comments on Element A.1.A?

6 A Not in specific detail, no.

7 Q Would your answer be the same for each NUREG  
8 element set forth on the seven pages of your notes?

9 A Yes, it would.

0 Q And I assume, Mr. Baldwin, that you would also  
1 be unable to tell me which agencies or individuals were  
2 in the minority initially with respect to how an item  
3 of NUREG 0654 should be rated; is that correct?

4 A Could you ask the question again, please?

5 Q For each element of NUREG 0654, are you able to  
6 tell me, based on your notes or anything else, which agencies  
7 or individuals of the RAC were at least initially in the  
8 minority with respect to how an item should be rated?

9 A Which particular agencies, no. I would not be  
0 able to do that.

1 Q Are you able, Mr. Baldwin, based on your notes  
2 or anything else, to tell me which agencies and individuals

1 thought an element of NUREG 0654 should be rated adequate  
2 and which agencies or individuals of the RAC thought an  
3 element should be rated inadequate?

4 A I can tell you with respect to my own comments  
5 from this.

6 Q These comments would reflect, for example, three  
7 of eight thought adequate; five of eight thought inadequate.  
8 But could you tell me the particular agencies or individuals --

9 A Are we speaking of A.2.A?

10 Q I'm trying to do this without talking about any  
11 particular element. Okay. I'm trying to ask you, do you  
12 have knowledge and can you testify about what particular  
13 agencies thought, regarding how an item should be rated,  
14 either as adequate or inadequate?

15 MR. GLASS: At what point in time?

16 MR. MILLER: As of right now.

17 BY MR. MILLER: (Continuing)

18 Q As of the time, Mr. Baldwin, comments were  
19 initially submitted by the RAC members. Okay. Now, as  
20 of that time, can you tell me for any elements of NUREG  
21 0654 which agencies or individuals of the RAC thought the  
22 item should be rated adequate and which agencies or

individuals initially thought the item should be rated inadequate?

A Given the amount of information that I have had to hold in my head about all of this material, both plan and comments and revisions thereof, it would be impossible for me to try and recall, without making a great many errors in it, which agencies provided which comments.

This table does one thing only for me. It provides me with a numerical breakdown of how the rating came out and it gives me some essence of the substance of the comment that was provided to us. It summarizes that.

Q Now, Mr. Baldwin, you have told me that your review process in terms of what you did to reach judgments regarding the adequacy of the LILCO plan under NUREG 0654 always consisted of looking at 0654 and then the LILCO plan, correct?

A Right.

Q Can you tell me, or do you know, what members of the RAC Committee and Mr. Keller, what they specifically did to reach their judgments regarding the adequacy or inadequacy of the LILCO plan?

A No. I can't get into their thought processes

1 it at some length this morning.

2 MR. MILLER: I understand you have an objection.

3 BY MR. MILLER: (Continuing)

4 Q Mr. Baldwin, can you tell me, do you know what  
5 RAC members did?

6 A Well, the basis for their -- as I've said  
7 before, the basis for the draft working document that we  
8 took into the 20th meeting was supplied in writing. In  
9 the process of doing the consolidation, I either requested  
10 Roger Kowieski or Robert Aderno to recontact that RAC  
11 member and provide us with clarification as to what it  
12 meant, or I called that person, or we put it in the document  
13 and then we discussed it at the RAC meeting on January 20th.

14 Q Yes, sir. Let's back up and make sure we under-  
15 stand one another.

16 I'm talking about the initial comments that were  
17 presented on Revision 3 by members of the RAC. Do you  
18 know what -- do you personally know what those members of  
19 the RAC did to reach judgments and to present their comments  
20 regarding the adequacy or inadequacy of the LILCO plan?

21 This is one point where I wouldn't want you to  
22 presume or to speculate, Mr. Baldwin. I want to know if you

1 personally know this information.

2 A I do not personally know, because I didn't  
3 personally watch them do the RAC review, go page by page,  
4 see what other guidance documents that they might have  
5 that referred to the roles of their agencies and their  
6 responsibilities.

7 Q Yes, sir. I'm not asking if you personally  
8 watched them. It would include, did you ever have a  
9 conversation with members of the RAC in which you said,  
10 or discussed, what those members did --

11 A No.

12 Q -- in their involvement with the Shoreham plan?

13 A No. No.

14 Q Did you ever have any discussions of any kind  
15 in that regard?

16 A As a preliminary discussion to the RAC meeting  
17 on January 20th, there was a good deal of informal conversa-  
18 tion about that, about how extensive the plan was and how  
19 much time it took for them to do it. And based on that,  
20 that has been my exposure to it. That would be my first-  
21 hand knowledge of how people went about their plan review.

22 Q Is it fair to say, Mr. Baldwin, that persons of

ATTACHMENT 6





1           A     What do you mean by the underlying basis? I know  
2 what the basis of the RAC review are the comments provided by  
3 the RAC members.

4           Q     Now, do you know what conclusions or determinations  
5 or judgments were made by the individual members of the  
6 RAC committing in forming the RAC report? Do you personally  
7 know that information?

8           A     I know that their reports and their portions of  
9 the material that was used in the RAC report was done by  
10 them because they have certain levels of expertise, and we rely  
11 on their expertise to provide information in the RAC review  
12 regarding the plan and its meeting of the 0654 standards.

13          Q     More specifically, looking -- if we look at the  
14 RAC report, are you in a position or do you know what  
15 conclusions or judgments were made by the individual members  
16 of the RAC committee in forming the RAC report, putting  
17 together the RAC report?

18          A     No, I do not.

19               MR. GLASS: Mr. Miller, you are attempting to  
20 go through each of the individual contentions.

21               MR. MILLER: I am not attempting to do that.  
22 That is why I am trying to do this in a general basis.

1 Q Other than portions of the LILCO plan, do you  
2 know what other documents, if any, would have been reviewed  
3 by members of the RAC committee in forming their conclusions  
4 as set forth in the RAC report?

5 A Certainly NUREG 0654 and some of the radiological-  
6 related standards. There are other guidance documents which  
7 I am sure were reviewed by the people.

8 Q Portions of the LILCO plan, NUREG 0654, other  
9 guidance documents. Would you know of anything else that  
10 the members of the RAC committee reviewed or looked at  
11 in forming their conclusions and judgments as set forth in the  
12 RAC report?

13 A No, I wouldn't. But followed the same process that  
14 they have followed for every other site in the region.  
15 From everything that I can understand, it was a full, formal  
16 RAC review of which they have done several previous to this  
17 one.

18 Q I am trying to understand specifically what was done  
19 by these individuals.

20 Is it fair to say that you just do not know what  
21 these individual members would have done in putting together  
22 the RAC report other than looking at portions of the LILCO

1 plan, NUREG 0654, and other guidance documents?

2 A And submitting a report to the RAC chairman and  
3 then coming to the meeting on January 20.

4 Q Other than those things, do you know of anything  
5 else they would have done?

6 A I do not know the individual work habits of the  
7 RAC members, no.

8 Q I am not looking at the work habits as much as what  
9 they looked at or reviewed in putting together the RAC report

10 A As I have answered before, they used the same  
11 material, it is my understanding, that they do for any formal  
12 RAC review.

13 Q Do you know, for example, Mr. McIntire, did  
14 members of the RAC committee look at the prefilled written  
15 testimony in this proceeding, in the Shoreham proceeding?

16 A Our prefilled testimony?

17 Q Not FEMA's. Testimony of other parties in the  
18 proceeding, would they have looked at that, do you know?

19 A I don't know for sure. It is my assumption that they  
20 did not because they would not have access to this material.  
21 The reason that I have access to it is because Mr. Glass  
22 receives copies of all transcripts and, therefore, I rely on

ATTACHMENT 7

1 resolved.

2 JUDGE LAURENSEN: Does FEMA or the Staff have  
3 a position on both of these Motions?

4 MR. GLASS: I just want to make one note for the  
5 record. The RAC Review, which is attached to the FEMA  
6 testimony, was very carefully drawn, in one way, to assist  
7 this particular Board. The legal concerns were set out as  
8 a separate attachment, so that if that issue did become a  
9 major part of this hearing, or if there was a change in the  
10 status, or a definition of the status of the legal concerns,  
11 that the Board would be able to utilize that document to  
12 assist it in its findings. That is the only comment I have  
13 to make at this time.

14 JUDGE LAURENSEN: That goes to the State's Motion,  
15 but what about the County's Motion to compel production of  
16 documents by FEMA, to postpone the cross examination, and  
17 to issue subpoenas for the RAC?

18 MR. GLASS: I did not realize we were going to get  
19 to that one this quickly. We seem to be dealing with a number  
20 of Motions at the same time.

21 I will state again, for the record, my objection  
22 to the fact that we have to comply on such short notice.

23 Basically, the County is asking for three things.  
24 They are asking for additional time to depose Mr. Kowieski.  
25 They are asking to acquire the thirty documents that were held

1 to be privileged, and they were asking to depose the RAC  
2 members, all of which would result, according to Suffolk  
3 County, or would require, according to Suffolk County, the  
4 postponement of the testimony of FEMA's witnesses.

5 I must admit having read the Suffolk County's  
6 Motion, I am quite concerned about the number of mis-  
7 characterizations that are contained therein, and that is the  
8 reason that I am hesitant to argue at this point, because I  
9 think it is necessary for a full record to indicate line  
10 and page citation to overcome it.

11 But considering where we are today, I will proceed.  
12 They raise three points. Referring back to the Appeal Board's  
13 decision. They raise the issue of whether there were  
14 significant differences of opinion of the RAC members on  
15 important issues affecting the adequacy of the LILCO Plan.  
16 Whether the members would be unable to defend or explain  
17 the underlying basis of FEMA's determination, or number three,  
18 whether they relied in an inordinate degree, on the views  
19 of the others.

20 None of these three tests are met.

21 It is very obvious by a reading of the transcripts,  
22 and my own attendance there, and I think the other members  
23 also in attendance, that they did not establish a compelling  
24 need. The witnesses consistently, even though deposed  
25 separately, stated clearly for the record that there was no

1 disagreement by the individual RAC members with the final  
2 RAC Report.

3 Not only did they reach consensus at that  
4 particular January 20th meeting, which is referenced in the  
5 various Motions, but in addition, in discussions that took  
6 place after the fact, all three witnesses that were asked  
7 on this particular area, stated for the record that all the  
8 RAC members were happy with the findings.

9 There was nobody beaten down into subjugation  
10 to admit or accept a conclusion that they were not satisfied  
11 with. FEMA witnesses produced information as to what they  
12 relied on. They fully discuss the basis of the RAC meeting.  
13 The testimony itself and the RAC attachment contains not only  
14 the ratings, but the reasons therefor.

15 The RAC Report does not provide a naked review  
16 of adequacy or inadequacy, but comments do give the basis for  
17 the rating. The instant Motion of Suffolk County states that  
18 FEMA's witnesses provided information, including the number  
19 of comments received from RAC members on each NUREG 0654  
20 element, prior to the meeting, with all RAC members in  
21 attendance. The notes that were provided by Mr. Keller and  
22 Mr. Baldwin also reveal the number of comments which were  
23 disagreed, at least initially, with the final RAC findings  
24 for each NUREG element to the LILCO Plan.

25 Neither Mr. Keller nor Mr. Baldwin's notes



1 reveal, however, the identities of the dissenting RAC  
2 members, and that seems to be what the Suffolk County attorneys  
3 are inquiring.

4 The statement that the reasons for the dissenting  
5 views were not given, and I disagree with the characterization  
6 of dissenting views, they were preliminary comments, is a  
7 mischaracterization of the strongest type.

8 I understand by the filings provided by Long  
9 Island Lighting Company, that you did receive copies of the  
10 two sets of notes that were provided by Mr. Keller and Mr.  
11 Baldwin.

12 Those notes were gone into in great detail by  
13 Mr. Miller at the deposition. He inquired into the underlying  
14 basis and the reasoning and what the notations meant.

15 In addition, FEMA provided and identified for  
16 the record the preliminary comments of Mr. Keller and Mr.  
17 Baldwin. The reason we did this is we understood the chilling  
18 effect, but we felt that since these individuals were witnesses  
19 appearing before this Board, that we would provide that  
20 information.

21 We were under no obligation to create those  
22 notes. They were created by the individuals, and I had not  
23 seen them prior to the depositions, to assist those individuals  
24 in answering the questions that may be posed by the County,  
25 and they utilized those notes. Mr. Keller utilized his, and

1 we provided them to Suffolk County's attorney; Mr. Baldwin  
2 utilized his, and we provided them to Suffolk County.

3 Suffolk County complains that they did not get  
4 Mr. Kowieski's notes. It was not necessary for Mr. Kowieski  
5 to utilize those notes at the hearing, since we provided him  
6 Mr. Keller's and Mr. Baldwin's notes, and he was able to answer  
7 the questions from them.

8 I repeatedly gave Suffolk County the opportunity  
9 to inquire. I indicated to him that they had not laid any  
10 groundwork or any basis for the production. He did not  
11 pursue it. He did not inquire. He asked questions, and those  
12 questions were answered by utilization of these other notes.

13 The County claims that they attempted to ascertain  
14 the reasons for and the substance of the RAC members dissenting  
15 opinions. They were given that information. The only thing  
16 that we refused, and the witnesses were directed not to provide,  
17 were the identities of the individual RAC members who held  
18 those preliminary reviews. It is a bold assertion that is  
19 important for the County to determine which RAC members  
20 dissented from the various RAC findings.

21 This issue has been discussed before the Appeal  
22 Board. It is clear from the record there was no dissent from  
23 the final RAC Report. There is no reason given why it is  
24 necessary to know which member disagreed at any time with  
25 the findings in the final RAC Report, and it is a misstatement

1 of fact, because they didn't dissent from the final RAC  
2 Report.

3 The individual ratings submitted a number of weeks  
4 before may not have been the same as contained in the RAC  
5 Report, but they did not have the benefits of the RAC  
6 meeting when those comments were submitted.

7 In addition, Mr. Miller was able to ascertain  
8 from the witnesses, and he repeatedly did from all four  
9 witnesses, the process that took place and was able to  
10 ascertain how the final decisions were arrived at, how  
11 consensus was reached.

12 They also indicate -- there is a statement  
13 on page 13 of Suffolk County's Motion, that my opportunities  
14 to question Mr. Kowieski and Mr. Keller and Mr. Baldwin went  
15 to their involvement in the RAC. Not true. No -- there  
16 was no such limitation. The information provided in the  
17 notes indicated the number the oadequate and the number of  
18 inadequate ratings submitted for each element in the  
19 individual RAC comments, and the reasons for those comments  
20 were either provided in the RAC Report and differences between  
21 the collegial RAC ratings and the individual RAC comments were  
22 contained in the material provided by Mr. Keller and Mr.  
23 Baldwin.

24 We also have the question of the time period  
25 that Suffolk County indicates that they were cut off in their

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1 ability to conduct their cross examination.

2 When we originally determined how the depositions  
3 would take place, it was a negotiated process. FEMA agreed  
4 to allow Suffolk County to depose the individuals as  
5 individuals, and not as a panel, and in exchange it was  
6 agreed that the depositions would take place in New York  
7 for two business working days.

8 Later on it was determined that we would prefer  
9 to have Mr. Baldwin go first, and Suffolk County indicated  
10 they would appreciate having some additional time, because  
11 they felt they needed more time with Mr. Kowieski. The  
12 original agreement, as I remember it, was that we had  
13 agreed until six o'clock. There was no attempt to try to  
14 cut off, but there has to be some sort of reasonable agreement,  
15 especially when you had mutual consent on the original  
16 agreement.

17 On the first day of depositions, there had been  
18 no agreement as to an extension of time, and FEMA voluntarily  
19 kept the witness there an additional hour. A review of the  
20 transcript will indicate that no more than ten or fifteen  
21 pages were taken up by any other parties in their cross  
22 examination, during the deposition of Mr. Kowieski. The  
23 original agreement dealt with two business days, and included  
24 time for all the other parties. So, there certainly was no  
25 inordinate amount taken at that time.

1           In addition, what raises some questions as to  
2 whether Suffolk County was under the impression that there  
3 was additional time needed or agreed to, was the fact that  
4 none of the other parties were aware of any additional time,  
5 nor was the court reporter, who had to reschedule his flight,  
6 aware of such changes.

7           In addition, we went, instead of six o'clock,  
8 we went until seven twenty-two, and it is only because the  
9 Suffolk County elected to spend so much time with Mr. Baldwin,  
10 which was supposed to be a short deposition, that we did not  
11 start until a little bit before four o'clock. In either case,  
12 the County had almost three and a half hours to depose Mr.  
13 Kowieski.

14           We tried to again rearrange Mr. Kowieski's time,  
15 and we offered the County an additional ten to fifteen  
16 minutes, and they indicated they could not complete it in that  
17 time, and they refused that offer.

18           There has been no showing in the filing by  
19 Suffolk County that; a, there is need to have additional time  
20 by Mr. Kowieski; that, b, that they have a need for the  
21 thirty documents, or a right or need to depose the RAC  
22 members. This Board has addressed before the issue of  
23 the identification by FEMA of who its witnesses shall be,  
24 and who shall be deposed.

25           If it would assist the Board, at least on

1 Mr. Kowieski's deposition transcript, I can give you line and  
2 page, for where Mr. Kowieski discussed the basis of his  
3 testimony, discussed the personal notes and the reason we  
4 withheld them, and the fact that no foundation was laid for  
5 Mr. Kowieski's notes. That it was not pursued. That the  
6 process was explained. That there was no disagreement by  
7 the members of the RAC and that they reached consensus, that  
8 -- about the assumptions utilized by the RAC. About the  
9 format of the final RAC Report. His involvement. His  
10 comments. The RAC meeting. The fact that Mr. Kowieski states  
11 on page 86, lines 3 through 7, that I can recall the  
12 substance, the substance of the discussion when it was inquired  
13 if he could provide information as to the RAC meetings, the  
14 changes that took place to reflect the RAC concerns, and the  
15 handling of the differences in ratings.

16 For all the above reasons, I respectfully submit  
17 that the Motion of Suffolk County should be denied.

18 JUDGE LAURENSEN: All right. We will take a  
19 brief recess and consider both of these Motions, and we will  
20 be back with our decision.

21 MR. McMURRAY: Excuse me, Judge Laurenson, the  
22 County has been accused of mischaracterizing the record, and  
23 I think the County ought to have an opportunity to respond  
24 to the comments made by Mr. Glass.

25 MR. BORDENICK: Judge Laurenson, I would also

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1                   However, there were certain agreements reached  
2 between the County and FEMA. The County used its time as  
3 it sees fit. It agreed to two days. If it decided to spend  
4 substantially all of Friday with Mr. Baldwin and leave very  
5 little time for Mr. Kowieski, that's their choice, and that  
6 is a decision they will have to live with.

7                   In summary, the Staff fully agrees with FEMA  
8 that the County's motion should be denied in all respects.

9                   JUDGE LAURENSEN: We will get to Mr. McMurray's  
10 request in just a moment.

11                   (The Board is conferring.)

12                   We have considered the County's request to re-  
13 spond, but we decided that we will not allow a response  
14 here. So, at this time we will consider the positions of  
15 the parties and we will be back with a ruling on these two  
16 motions.

17                   (Short recess.)

18                   JUDGE LAURENSEN: The thrust of the County's  
19 motion is that the County believes that it has established  
20 the necessary facts to be entitled to an Order that FEMA  
21 should be required to turn over the thirty predecisional  
22 documents which the Appeal Board held were privileged and  
23 not discoverable.

24                   The County reviews the history of this dispute  
25 and then cites and attaches portions of the depositions of

#5-2-SueT

1 the four FEMA witnesses taken June 27th and June 29th.  
2 During those depositions, FEMA voluntarily produced some  
3 notes prepared by witnesses Keller and Baldwin prior to  
4 their depositions. These notes reflect the number of com-  
5 ments which disagreed at least initially with the final  
6 RAC findings for each NUREG 0654 element of the LILCO plan.

7           However, the County complains that these notes  
8 do not identify the dissenting RAC members or the reasons  
9 for their dissenting views. The County believes that it is  
10 important for it to determine which RAC members dissented  
11 from various RAC findings. This is a complete about-face  
12 from the County's position before the Appeal Board where at  
13 Page 17 of the Appeal Board decision, AIAB 773, it is  
14 stated, "Counsel for the County disavows any particular  
15 interest in the names of individuals putting forth specific  
16 views. She seeks only the basis of the RAC conclusions."

17           Moreover, the County does not attempt to explain  
18 why it has now become important to have this information.  
19 While the County speaks in terms of its right to probe the  
20 basis of the RAC review, the County has failed to show that  
21 it has established the compelling need for these documents  
22 which the Appeal Board found absent last month.

23           We agree with LILCO that the County has failed  
24 to meet any of the preconditions to further discovery set  
25 by the Appeal Board. At this time, Suffolk County has not



#5-3-SueT

1 established "significant differences of opinion among  
2 members of the RAC on important issues effecting the  
3 adequacy of LILCO's plan."

4           Moreover, the County has not established that  
5 these FEMA witnesses are unable to defend and explain  
6 adequately the FEMA findings or that the witnesses view  
7 were inordinately derivative of other views. Unless the  
8 County makes such a showing, the executive privilege pre-  
9 cludes probing the individual views of individual RAC  
10 members.

11           While we prefer to dispose of this motion on  
12 the merits so that all parties will understand the test  
13 we will apply to the cross-examination of the FEMA witnesses,  
14 we also deny this motion for the reason cited by LILCO  
15 that it is inexcusably late. Although these depositions  
16 were taken a week earlier and presumably the County knew  
17 it would have to file the instant motion, it waited a full  
18 week after completion of the last deposition before filing  
19 this motion. That left only one business day to consider  
20 this request before the hearing was to resume.

21           We find that under these circumstances the un-  
22 timeliness of the motion would be a sufficient cause to deny  
23 it.

24           In conclusion, all three requests of the County  
25 are denied at this time. We will carefully monitor the

#5-4-SueT

1 FEMA testimony during the course of this hearing to deter-  
2 mine whether a different result should obtain.

3 MR. MCMURRAY: Judge Laurenson, I think in  
4 light of the fact that the Board has focused on a quote  
5 taken from the Appeal Board decision, and the County's view  
6 at this time that that quote was taken out of context, I  
7 think it would be appropriate for the County to be given an  
8 opportunity to respond both to Mr. Glass' statements, LILCO's  
9 response to the County's motion, and to the Board's ruling  
10 and ask for reconsideration.

11 JUDGE LAURENSEN: Well, let's move on first of  
12 all, and then we will take up your motion for reconsidera-  
13 tion.

14 New York presented an oral motion here to stay  
15 the cross-examination of the FEMA witnesses. That motion  
16 is untimely and could be denied for that reason alone. How-  
17 ever, we further note that New York cites no legal authority  
18 or precedent to support its assertion that the mere pendency  
19 of legal issues in the State courts precludes going forward  
20 with FEMA testimony. We know of no such precedent.

21 Good case management requires that we deny the  
22 New York motion and proceed with the testimony.

23 Now, getting back to the County's motion for  
24 reconsideration, I think the point of our comment about the  
25 statement made by your counsel, your co-counsel, before the

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1 Appeal Board was that it was different than the position  
2 you are taking here, and that in any event the County has  
3 given no reasons to explain why it now believes that it was  
4 important to receive the individual views of the RAC members.  
5 And that's the basis on which we ruled, not on the basis of  
6 any quote from your counsel at the Appeal Board hearing.

7 MR. MC MURRAY: Well, the point I wish to make,  
8 Judge Laurenson, is that the position of the County before  
9 the Appeal Board is perfectly consistent with its position  
10 now. What Ms. Letsche was saying in that quote that you  
11 lifted from the Appeal Board opinion was based on a request  
12 for FEMA documents. What Ms. Letsche was saying at that  
13 time was that we were not asking for the identification of  
14 the individual RAC members at that time, because we didn't  
15 know whether there was unanimity or lack of unanimity; and,  
16 therefore, it was not considered important at that time to  
17 determine what their individual opinions were, if in fact  
18 there was unanimity.

19 But, as everybody recognized, the Appeal Board  
20 and all parties present, was that if there was a significant  
21 lack of unanimity then the identities of the individual RAC  
22 members and their individual opinions would, of course, be  
23 relevant. And that is why we are now asking for the  
24 identity of the individual FEMA members and their opinions,  
25 because as it turns out at the depositions it was revealed

#5-6-SueT

1 that before the January 20th meeting there was substantial  
2 lack of unanimity. And then out of this meeting came some  
3 sort of consensus. And we were not able to determine how  
4 this consensus was arrived at.

5 That's the thrust of the County's motion.

6 JUDGE LAURENSEN: The thrust of our decision was  
7 that you have not established significant differences of  
8 opinion among members of the RAC on important issues affecting  
9 the adequacy of LILCO's plan. And so there is nothing in  
10 that argument that you made that affects our decision here.

11 MR. MC MURRAY: We were barred from doing so,  
12 Judge Laurenson. That's our entire point.

13 If you look at the Baldwin and the Keller notes,  
14 it shows that people went into that RAC meeting with sub-  
15 stantial differences of opinion. If you look at LILCO's  
16 motion, I think they attached the relevant notes, and it  
17 shows that for many, many of the issues there was a lack of  
18 unanimity. And then apparently out of this all came some  
19 sort of consensus. And we were barred from finding out  
20 how this lack of unanimity somehow became a consensus,  
21 whether people were -- whether they took a vote, or whether  
22 or not expert opinions were overridden by certain members of  
23 the RAC Committee, those types of questions.

24 We were not able to find that out. So we don't  
25 know whether or not in the end there was a substantial

#5-7-SueT 1 disagreement.

2 JUDGE LAURENSEN: The County's motion for re-  
3 consideration is denied.

4 We turn next to the LILCO motion to admit LILCO's  
5 supplemental testimony on Contention 24.R, the letter of  
6 agreement with Connecticut. On June 20, 1984 LILCO filed a  
7 motion to admit supplemental testimony on Contention 24.R,  
8 along with the supplemental testimony of Dr. Cordaro and  
9 William F. Renz. And a letter dated May 22, 1984 from Mr.  
10 Renz to Frank Mancuso, Director of the Connecticut Office of  
11 Civil Preparedness, and the response from Mr. Mancuso to  
12 Mr. Renz, dated June 14th.

13 New York and Suffolk County oppose the motion  
14 to admit the supplemental testimony and attachments, whereas  
15 the NRC Staff supports LILCO's motion.

16 In LILCO's prefiled written direct testimony in  
17 chief on Contention 24.R, which was filed March 2, 1984,  
18 LILCO attached and relied upon a letter dated December 15,  
19 1983 from Frank Mancuso, Director of the Office of Civil  
20 Preparedness for Connecticut, to Donald A. Devito, Director  
21 of the Office of Disaster Preparedness for New York, to  
22 establish that Connecticut had agreed to assume responsibility  
23 for implementing protective actions for the portion of the  
24 Shoreham fifty mile ingestion exposure pathway within  
25 Connecticut.

RELATED CORRESPONDENCE

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Appeal Board

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

CERTIFICATE OF SERVICE

I hereby certify that copies of SUFFOLK COUNTY BRIEF IN SUPPORT OF ITS NOTICE OF APPEAL OF THE JULY 10 ASLB ORDER DENYING PRODUCTION OF DOCUMENTS BY FEMA AND ISSUANCE OF SUBPOENAS TO THE MEMBERS OF THE RAC dated July 26, 1984, have been served to the following this 26th day of July 1984 by U.S. mail, first class, except as otherwise noted.

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Dated: July 26, 1984

\* By Hand  
\* By Federal Express