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

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In the Matter of : Docket No.

LONG ISLAND LIGHTING COMPANY : 50-322 O.C.

(SHOREHAM NUCLEAR POWER STATION, UNIT 1) :

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Deposition of RICHARD KESSEL, held at
the Office of the Governor, Two World Trade
Center, New York, New York, on the 2nd day of
July, 1984, at 10:45 o'clock a.m., before
Douglas M. Burke, RPR, a Notary Public of the
State of New York.

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APPEARANCES:

KIRKPATRICK, LOCKHART, HILL, CHRISTOPHER &
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R I C H A R D K E S S E L , called as a
witness, having been first duly sworn by the
Notary Public, was examined and testified as
follows:

EXAMINATION BY

MR. ROLFE:

Q. Mr. Kessel, state your full name and
business address.

A. Richard M. Kessel, 250 Broadway, Room
1725, New York City 10007.

Q. What is your occupation, sir?

A. I am currently working for the State of
New York. I am the executive director and
chairperson of the New York State Consumer
Protection Board.

Q. How long have you been in that position?

A. I have been in that position
approximately four months. However, just to
clarify for the record, prior to that for
approximately three months I was the acting
executive director of the agency pending my
confirmation by the New York State Senate.

Q. What was your occupation prior to
becoming acting executive director and chairperson

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of the New York State Consumer Protection Board?

A. I was a consumer advocate for approximately nine years.

Q. You say you were a consumer advocate. Can you be more specific?

A. Yes. I taught consumer economics part time at Brooklyn College for approximately six years. I was a consultant to the Borough of Manhattan for approximately six years on utility rate matters, and I also was very active in the consumer movement on Long Island for approximately nine years, and among other things was very active in intervening in rate cases concerning the Long Island Lighting Company.

Q. What is your educational background?

A. I attended -- I assume from college on. I attended Colgate University from 1967 through 1969. I finally graduated with a bachelor's in political science from New York University, the Heights Bronx campus, in 1971. I obtained a master's in political science from Columbia University in February of 1974.

Q. What did you do immediately after graduating from college?

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2 A. I ran for the State Senate and I didn't
3 win. I also -- that was in 1974. Right after
4 that I began to work in the consumer field as a
5 volunteer for approximately a year.

6 Q. A volunteer for any particular
7 organization?

8 A. Well, I created a couple of
9 organizations at that time. My first organization,
10 I think, was Say No to LILCO, and the organization
11 after that was, I think, Consumer Action Now.

12 Q. What was Consumer Action Now?

13 A. It was a consumer group. Both of the
14 groups were consumer groups, most of them dealing
15 with LILCO rate increases and the construction of
16 the Shoreham and Jamesport nuclear power stations.

17 Q. The group whose name was Say No to
18 LILCO, I take it the "No" referred to the
19 construction of the Shoreham plant?

20 A. No, it referred to a rate increase that
21 LILCO was seeking at the time.

22 Q. Why were you opposed to the rate
23 increase?

24 A. I didn't feel it was in the public
25 interest to reward LILCO a 20 percent rate

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2 increase. I felt it would be harmful to the Long
3 Island economy.

4 Q. What was the basis of your belief?

5 A. Based upon reading the testimony and
6 exhibits offered by LILCO staff to the Public
7 Service Commission and other intervenors, based
8 upon my attendance at public hearings and
9 evidentiary proceedings.

10 Q. Was it your position at the time that
11 there was no basis in law for the rate increase,
12 or exactly what?

13 A. There was no basis in need in terms of
14 the economic need. There was no basis in terms of
15 what LILCO had asked for in terms of their rate
16 filing. I didn't feel that LILCO made a prima
17 facia case for rate relief at the time. Surely
18 there was the right of a utility to ask for a rate
19 increase. That wasn't the question. The question
20 was whether or not they had shown through their
21 testimony and exhibits that they were entitled to
22 a rate increase, and I felt that they didn't.

23 Q. You say you formed these two consumer
24 groups. They were the first groups you formed.
25 After your work for those groups ceased, what did

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you do?

A. I don't know that there was ever a cessation. I may have formed other groups, but I did a year or two after that begin to teach at Brooklyn College consumer economics part time. Brooklyn College had a consumer studies department and I taught in that department.

I also began to work for then Assemblyman Andrew Stein on consumer issues part time for the legislature, and when he was elected to the Borough Presidency of Manhattan, after several months I went to work with him as a consultant on utility rate issues.

Q. What expertise do you have in the area of utility rate matters?

A. I am self-taught. I have appeared in approximately four Consolidated Edison rate increases representing the Borough of Manhattan, approximately four, maybe five New York Telephone rate increases representing the Borough of Manhattan.

I have appeared in a number of generic proceedings representing either myself or the Borough of Manhattan. I have intervened in

1
2 probably five or six Long Island Lighting Company
3 rate increases, and I have also submitted a number
4 of petitions, some of which have been granted, to
5 the Public Service Commission.

6 Let me just clarify my intervention. I
7 have read and analyzed the filings. I have worked
8 with other attorneys from the Consumer Protection
9 Board, from the County of Suffolk, from the County
10 of Nassau, from the Town of Hempstead. I have
11 cross examined witnesses. I have prepared
12 discovery. I have analyzed discovery. I have
13 written parts of briefs. I have written whole
14 briefs in those particular cases.

15 Q. Have you ever taken any courses in
16 economics?

17 A. Have I ever taken any courses in
18 economics? Probably in college. I really don't
19 remember. Probably in college.

20 Q. Have you ever taken any courses on
21 financial matters that would bear on rate cases?

22 A. No.

23 Q. Have you ever worked for a utility?

24 A. No.

25 Q. Have you ever worked in the utility

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industry in any aspect of it?

A. No. Assuming that you don't mean rate cases representing the public's side, right.

Q. Other than that.

A. Right.

Q. Have you ever intervened in a rate case on behalf of the utility or telephone company and supported the requested rate increase?

A. No. Can I just clarify one point? In saying that, I think you understand that there are many issues in a rate case, from rate of return to executive compensation to construction to productivity, and obviously one can testify about certain areas and not touch on other areas in a rate case. It is not just an all or nothing proposition.

Q. In those areas in which you have testified, have you ever testified in support of the position taken by the organization seeking the rate change?

A. Very possibly the answer would be yes. I could think of one example offhand, would be basic budget service for the New York Telephone Company, which I supported. Also in a Con Edison

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2 rate case I did support a lifeline proposal that
3 the company had proposed, although I supported an
4 alternative proposal. I did support that type of
5 a proposal, and revenue allocation, I did support
6 the revenue allocation as presented by LILCO in
7 its pending electric rate case, and there may be
8 other things that I supported. Those are the ones
9 that come to mind.

10 Q. With respect to LILCO's revenue
11 allocation request, did you support it in
12 principle or all the way down the line in terms of
13 its numbers?

14 A. We supported their position, period.

15 Q. What is your course in consumer
16 economics that you taught in Brooklyn College?

17 A. I taught three. I taught introduction
18 to consumer studies, which basically encompassed
19 telling consumers or telling students how they
20 could be consumers, what consumer laws existed to
21 protect them, explained a little bit about the
22 regulatory process, etc.

23 The second course I taught was consumer
24 resources. That basically was a course dealing
25 with the resources that consumers had at their

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2 disposal to help them protect themselves, from
3 governmental to non-governmental resources.

4 Finally I did teach consumer and energy,
5 and that dealt with primarily the whole energy
6 field. It dealt with nuclear power. It dealt
7 with the economics of nuclear power. It dealt
8 with utility rates in general. It dealt with
9 energy conservation, etc.

10 I would say that course differed from
11 the other two in that it hadn't been offered for a
12 while at Brooklyn College, and because I was there
13 and was very active in the field, they let me
14 revitalize the course and pretty much I developed
15 the course itself from my own outline.

16 Q. Did you use any texts?

17 A. Yes, I did use -- in those courses?

18 Q. Yes.

19 A. Yes. To remember the names would be
20 hard.

21 Q. Specifically in the consumer and energy
22 course, was there any text?

23 A. Yes, it was Energy Future by Yergin and
24 Stobaugh from the Harvard Energy Report. I did a
25 lot of on-site training with my students. I took

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a number of my classes to the Shoreham nuclear power plant to see the plant.

Q. Have you ever published any articles about the economics of nuclear power or nuclear power in general?

A. When you say published articles, I have written articles that have been published on nuclear power, usually specifically as it related to the Shoreham nuclear power station.

Q. Can you list those articles for me?

A. The most recent one was about a week ago. It was June 28, I think, in Newsday on -- I don't know the title of the article, but it was a full page article related to LILCO and its Shoreham nuclear power station. I have probably written several other Op-Ed pieces for The New York Times years ago on both the Shoreham plant and Jamesport and the economics thereof. I have probably written several other Op-Ed pieces for Newsday on the issue as well. To know the exact dates, I really couldn't tell you.

Q. The pieces you have written concerning Shoreham and Jamesport, have they all dealt with the economics of those plants?

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2 A. I would say they dealt with the
3 economics of the plants and whether or not it was
4 in the public interest to construct and/or
5 continue construction of the plants.

6 Q. From what perspective did you evaluate
7 the public interest in those articles?

8 A. A number of perspectives -- whether or
9 not the plants were affordable to the public,
10 whether or not the public could support those
11 types of plants and operations, whether or not
12 there was a need for them in terms of capacity in
13 the State of New York. I would say those are the
14 areas which I discussed.

15 Q. How did you evaluate whether there was
16 a need in terms of capacity?

17 A. By reviewing the State Energy Master
18 Plan as published by the State Energy Office.

19 Q. Do you have any independent expertise
20 in that field?

21 A. I would say I do. I have reviewed
22 State Energy Master Plans for a number of years.
23 I have intervened, my agency has intervened in the
24 state energy master plan proceedings, so I would
25 say I have reviewed them and am aware of them.

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Q. Have you ever participated in formulating the state energy plan?

A. As I said, my agency is currently an intervenor -- it is still ongoing, isn't it? It was an intervenor in the most recent preparation, and I helped to rewrite and edit the briefs and discussed the positions that we felt should be taken in the State Energy Master Plan, so I would say the answer is yes.

Q. How are those positions formulated?

A. When you say that, our positions or the State's plans?

Q. Your positions.

A. I would say discussing with my staff, my counsel, and others what we felt were the requirements in the state, what was available, what plans we felt should go on line or should not go on line. Then in the end I guess an executive decision by myself as to what position we should take.

Q. Do you have any experience in engineering with power plants?

A. Engineering? No, I am not an engineer. I have staff people who are engineers, though, at

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the Consumer Protection Board. They advise me.

Q. Do you have any experience in forecasting energy supplies, either their availability or their price?

A. I would say yes. First of all I have people on my staff who do that on a regular basis. As part of their job, they advise me.

I would also say that over the years I have worked somewhat independently doing surveying of the energy field, particularly in the oil area. I have published a number of surveys on the price of oil, the price of home heating oil gasoline, et cetera, and so I think I have some personal knowledge of that as well, but I do have expert staff on that.

Q. I understand you have expert staff. Right now I am focusing on your personal expertise. You say you have published a number of surveys on the prices of home heating oil. Have you ever published forecasts about the availability of oil, for example?

A. I have published forecasts of what I felt the supply picture was going to be like down the road and what that meant in terms of price to

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the retail consumer.

Q. On what did you base those forecasts?

A. Surveys, discussions with retailers, discussions with wholesalers, discussions with experts in the field.

Q. What experts?

A. What do you mean, what experts?

Q. What experts did you discuss it with?

A. People who worked in the oil industry.

Q. Any particular ones?

A. I wouldn't want to divulge them, since I think the discussions were privileged, nor would I want to disclose the retailers that I surveyed in the past because I think there was an agreement with them that disclosing their names would not be in the best interests of the public.

Q. When were these surveys made?

A. I would say probably I started them in the mid-1970's and did them right up through the end of 1983, and they are continuing to be done by the Consumer Protection Board. I am not doing them personally, and they are structured differently because most of those surveys that were done were done with volunteer help. Now we

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have a staff. I have a staff.

I would say that the surveys may not be the same ones now that were taken at that time.

Q. On whose behalf were the surveys done at the time you began them?

A. On my behalf.

Q. You were not working for the State at that time?

A. No.

Q. Where were they published?

A. I would say they have been published in all of the major newspapers -- The New York Times, the New York Post, The Daily News, Newsday, a number of weekly publications. I would say they were published primarily in the State of New York. Up until this year I would say primarily in the downstate area. They were published on a regular basis.

Q. Under your name?

A. Yes.

Q. What exactly are your responsibilities as a New York State director of consumer advocacy?

A. You mean my agency or personal?

Q. Your personal responsibilities.

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2 A. My personal responsibility is to be the
3 head of New York's consumer protection agency and
4 to direct the staff of some 40 to 45 people, and
5 to do it on a seven-day a week, 24 hour a day
6 basis.

7 Q. What does the agency do?

8 A. What does the agency do? Well, we do a
9 number of things. Our prime goal, our prime
10 function is enacting legislation, to intervene on
11 behalf of the rate payers in utility rate cases.
12 I would say that is a good part of our budget, is
13 intervention activity since 1974.

14 We also have an advocacy part which
15 deals with developing consumer legislation, which
16 is brought before the New York State Legislature
17 and sometimes enacted, and also consumer education,
18 educating consumers, publishing pamphlets, doing
19 surveys, telling consumers what their rights are,
20 what the marketplace is like, etc.

21 Q. How do you determine or how does your
22 agency determine what issues it will express views
23 on?

24 A. I think there are a number of ways.
25 The end determiner is myself, but in terms of how

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2 we determine it, through staff meetings, through
3 complaints that we get from the public. A group
4 of people may write us on a specific issue which
5 may attune us to an issue that we need to get
6 involved in. The legislature, a number of
7 legislators will come up with an issue that they
8 want us to deal with. My own creativity and the
9 creativity of my staff. Consultations with the
10 governor and/or his staff.

11 I would say those are the major factors
12 that go into determining, and of course you
13 balance that with resources, what our budget is.

14 Q. I take it that you intend to appear as
15 a witness and express some testimony at the
16 hearings on LILCO's request for a low power
17 license before the Atomic Safety and Licensing
18 Board; is that correct?

19 A. Yes.

20 Q. Can you tell me on what subject matters
21 you intend to testify?

22 A. I would be testifying primarily on
23 whether or not granting LILCO an exemption would
24 be in the public interest.

25 Q. What is the expected substance of your

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opinion?

A. The expected substance of my opinion is that granting LILCO this exemption would not be in the public interest.

Q. What are your reasons for that?

A. There are several major reasons. First of all I believe that granting an exemption would put an unbearable cost burden on the rate payers of Long Island. Also I feel that based upon my experience in LILCO's construction of the Shoreham plant and their inability to properly construct the plant, I don't know that it would be in the best public interest to grant an exemption to a company that has so poorly managed the construction of the facility.

I would say another aspect of it would be that I feel that granting the exemption might add to the nuclear budget of the company and thus subtract from the service operation and maintenance budget of the company, which would impact upon service to the company's 900,000-plus customers on Long Island, and I would say that those are the general parameters of what I would be testifying on.

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2 Q. Let's take them one by one. The first
3 one was your view that there would be an unbearable
4 cost burden on the rate payers if an exemption
5 were granted.

6 Can you tell me how the burden on the
7 rate payers will change one way or the other
8 because of the exemption?

9 A. I think first of all the issue is that
10 if you grant the exemption and then the plant does
11 not get a license to operate commercially, the
12 plant will be contaminated.

13 That, in my opinion, would probably
14 cause the company, No. 1, to be unable to sell at
15 any reasonable price the fuel. It would make the
16 company unable to sell for any reasonable price
17 some of the component, major component parts of
18 the facility.

19 It would probably create
20 decommissioning costs which could be in the
21 millions and millions of dollars that would have
22 to be borne, or at least the company would contend
23 that it would have to be borne by the rate payers.
24 I think it would create enough antagonism to
25 result in massive demonstrations on Long Island

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which would add to the security cost at Shoreham and would also add to the cost of security for the governments involved, especially the County of Suffolk and to some extent possibly the State of New York and the County of Nassau.

I think that again, economically it would probably cause, because of the need to expend money on testing, it may cause the company to come in for yet another rate increase for LILCO customers related solely to the Shoreham nuclear power station.

Q. Do you understand the reason that LILCO applied for an exemption?

MR. LANPHER: I object to the question. How can he possibly know what LILCO's internal reasons were for applying?

MR. ROLFE: If he doesn't understand the question, he can say so.

MR. LANPHER: I don't understand it.

MR. ROLFE: All you need to say is objection and your objection is preserved. You don't need to coach the witness.

MR. LANPHER: I just want to state the basis for my objection.

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MR. ROLFE: If you want to coach the witness, we will have to call the judge.

A. Can you repeat the question?

Q. I asked you if you understood the reasons for LILCO's application for an exemption.

A. I don't know the reasons behind what LILCO does. Frankly I can't understand what they do many times. It is really hard to understand their policy because it changes so often. It is very hard to follow.

Q. Do you know from what LILCO seeks an exemption?

A. I know in general what LILCO seeks.

Q. What is your understanding of that?

A. My understanding is that LILCO seeks an exemption from the normal rules and practices which would allow them to get a low power testing license for the Shoreham nuclear power station.

Q. Do you know what normal rule or practice LILCO seeks to be exempted from?

A. I don't know the specific number, if that is what you are referring to.

Q. Do you know generally the substance of it?

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Kessel

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A. Yes. As I understand it, that they do not have an adequate, duly-approved emergency response plan, duly approved by the Nuclear Regulatory Commission, and furthermore that they don't have working, back-up diesel generators on site at the plant.

Q. Do you know what the exemption will allow LILCO to do if it is granted?

A. Yes. As I understand it, it would allow LILCO to begin testing at a low power level before those plans, or I don't know if the word is plans, but before those factors are formally approved by the proper regulatory agency.

Q. Do you have any opinion on the safety aspects of the exemption that LILCO seeks?

A. When you say do I have an opinion, personal opinion?

Q. Yes, sir.

A. I have a personal opinion.

Q. Do you intend to express that opinion in the testimony in this proceeding?

A. I really don't know at this time.

Q. When will you know that?

A. Soon. Surely by the time that I file

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the testimony on the 16th.

Q. What is your personal opinion concerning safety?

A. I feel the plant is unsafe.

Q. Why?

A. Based upon my following the construction of that plant for over ten years, based upon the knowledge of the management of Long Island Lighting Company, based upon my reading and helping, I guess, to edit and write the testimony that is currently the subject of a prudency investigation into the construction of the plant. I would have to conclude based upon the record up to now that that plant is not safe.

Q. What aspects of the plant do you believe to be unsafe?

A. The entire plant.

Q. In what respect?

A. I don't frankly trust Long Island Lighting Company management to operate the plant. I feel that any LILCO personnel that would touch that plant, I feel, would possibly render it unsafe.

Q. What is the reason for that opinion?

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2 A. Based upon my knowledge of the LILCO
3 officials, management of the company, their
4 inability to properly construct it, their
5 inability to tell the truth to the public. I
6 would not want those people operating a nuclear
7 power plant in any radius where I lived, and since
8 I do live on Long Island, I would not consider
9 that safe.

10 Q. What aspect of the plant do you
11 consider improperly constructed?

12 A. The entire plant. The parts in the
13 plant, the way the parts were procured, who the
14 parts were ordered from, how they were ordered. I
15 would say those are some of the factors.

16 Q. What parts?

17 A. All of the parts.

18 Q. Can you give me a specific example of a
19 part in the plant that you think is --

20 A. No, I couldn't give you a specific
21 example. I would say the whole plant is
22 inadequate.

23 Q. But you can't give any specifics?

24 A. That is correct. Let me say that I
25 don't want to deal with specifics. I surely think

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2 the diesel generators, the Transamerica Deleval.

3 Q. Are there any other aspects of the
4 plant physically that you believe to be unsafe
5 other than the Transamerica Deleval diesel
6 generators?

7 A. I would say the whole plant. Let me
8 say that I have taken a number of tours inside
9 that plant, inside and outside, and based upon
10 those tours and based upon again my experience in
11 terms of watching how LILCO constructed the plant,
12 I don't know that I could believe anything that
13 LILCO said about the plant.

14 Q. Are there any specifics of improper
15 construction or inadequate physical facilities at
16 the plant upon which you rely for that opinion
17 other than the TDI diesel generators?

18 A. I would say again the size of the
19 containment, the cramped conditions inside the
20 plant. I am trying to think of how you phrased
21 the question. All of the issues that have been
22 raised by our agency, the County of Suffolk and
23 the staff of the Public Service Commission in the
24 pending prudency investigation before the Public
25 Service Commission.

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2 Q. Are you aware as to whether the NRC has
3 reviewed the physical facilities at the plant?

4 A. I am not personally aware of that.

5 Q. So I take it you also wouldn't be aware
6 of any reports they had issued concerning the
7 plant?

8 A. I would say that is correct, I am not
9 personally aware of any reports that they have
10 issued. Frankly, I don't consider -- well, strike
11 that.

12 MR. ROLFE: Let me state for the record
13 that in the last 40 minutes or so, counsel have
14 been attempting to assist Mr. Kessel in his
15 answers. I want Mr. Kessel's answers to be as
16 complete as possible. In that regard I appreciate
17 counsel's help, but in the future I would just as
18 soon that he answer the question and not the
19 lawyers.

20 MR. LEVINE: I thought it would be
21 beneficial not to have unnecessary objections. I
22 thought it would be better to have him understand
23 which reports you are referring to. I just want
24 to be sure that the questions are clear and not
25 misleading on the record. It hasn't happened to

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my recollection more than three or four times.

MR. PALOMINO: It is not a continuous process at all.

Q. If you don't understand my questions, please ask. I am not intending to ask anything that is misleading, and if through my own inartfulness I do, tell me.

Let me ask you this: Has New York State intervened in any of the licensing proceedings to raise any contingents concerning the safety of the plant other than concerning the diesel generators?

MR. LEVINE: If he is not sure --

MR. ROLFE: If he doesn't know --

MR. PALOMINO: Just say you don't know.

A. I don't know.

Q. Your agency has not been responsible for that, I take it, for intervening in the licensing proceedings to raise safety issues?

A. That is correct. When I say not responsible, we haven't done it. I don't know that there is a responsibility, but we have not done that.

Q. Why do you believe the size of the

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containment at Shoreham is inadequate?

A. I think it was cramped. A number of workers I spoke to felt they weren't able to properly do the work required because the space was so cramped that they were unable to do a lot of the work and testing that they normally wanted to do.

Q. You talked to operators at the plant?

A. Yes. What do you mean by operators?

Q. I mean people who would be responsible for operating the plant both during low power testing and otherwise.

A. I don't know that I could distinguish between people who would operate the plant as opposed to people who were working or constructing the plant.

Q. When did you conduct these conversations?

A. I have been out at the plant a number of times and I would say during those trips and also in discussions that I have had privately with people who were constructing the plant who came to me of their own volition to discuss some of their concerns.

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Q. When was the last time you were at the plant?

A. When you say at the plant, you mean inside the plant --

Q. Yes.

A. I think inside the plant, August of 1983.

Q. What was the purpose of your visit at that time?

A. I was given a tour by the Long Island Lighting Company. I had asked for that and they had granted it.

Q. When you say some people had come to you and expressed complaints about conditions at the plant?

A. Yes.

Q. Who were those people?

A. I wouldn't name them. Most of them were people who had worked at the plant but who did not want their identities divulged. In fact most of them didn't tell me who they were.

Q. So you don't know their identities?

A. I don't know their names. I know that they worked at the plant.

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Q. How did you know that?

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A. They had identification badges.

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Q. Did they identify themselves as

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construction workers at the plant?

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A. Most of them did, yes.

7

Q. Did any of them identify themselves as

8

operators at the plant?

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A. To the best of my knowledge, one of

10

them did.

11

Q. Who was that?

12

A. I don't know his name.

13

Q. Is there any way you could find out his

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name?

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A. No.

16

Q. You don't have any records that would

17

indicate his name?

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A. No.

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Q. Do you have any records of those

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conversations or meetings?

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A. No.

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Q. No notes?

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A. I don't think so. I am saying I don't

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think so because I may have taken notes at a

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meeting. I doubt I still have those notes, but I

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may have taken notes at a meeting. I want to be truthful with you, and I may have taken notes at a meeting with several of the construction people.

Q. When was that meeting?

A. I would have to give you an approximate time frame.

Q. As best you can.

A. I would say in 1981, possibly also in 1982. I would say that the one in 1982 was in the summer. 1981, I just don't remember, but it was probably in January.

Q. As a result of those meetings did you take any steps to publicize any of the problems that were brought to your attention?

A. Did I take any steps to publicize? As a result of those specific meetings?

Q. Yes.

A. The answer would be no.

Q. Did you take any action as a result of the information that was given to you at those meetings?

A. I would say that I may have, and I underline "may have," because it is hard to recollect. I may have raised them at a LILCO

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board of directors -- not board of directors. A
LILCO stockholders meeting.

3

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Q. Did you turn any of that information
over to the NRC?

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A. I don't recall doing so.

7

Q. Other than the cramped conditions at
the plant and the size of the container and the
problems with the TDI diesel generators, are there
any other physical aspects of the plant that cause
you to conclude that it is unsafe to operate?

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A. No.

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Q. You say another reason that you
conclude it is unsafe to operate is because you do
not trust LILCO's management.

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16

A. Correct.

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Q. Can you tell me the basis for that
distrust?

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A. Yes. I have first of all the fact that
LILCO has changed the cost of the Shoreham plant
over a dozen times and the construction target
date over a dozen times. Based upon my knowledge
of how they have done that, I feel that they
misled the public in the cost of the plant and the
target date for completion of the plant.

1
2 I had several executives of the company
3 I have known in the public relations field who are
4 no longer with the company who have told me that
5 the company was not always truthful in terms of
6 discussing the cost of the plant to the rate
7 payers.

8 I would say in rate cases that I have
9 intervened in, the company has been less than
10 truthful in determining the cost of the facility
11 and in telling that to the public. There were a
12 number of instances where the company was giving
13 out a number for the cost of the plant while at
14 the same time filing a written report with usually
15 the Securities and Exchange Commission and/or
16 Congress giving a totally different number.

17 Based upon the press releases that the
18 company has put out that I have reviewed and the
19 accuracy of the information, based upon my
20 personal knowledge in going to a number of LILCO
21 press briefings, in LILCO's responses to my press
22 briefings or conferences, I would say that the
23 company has been less than truthful with the
24 public.

25 Based upon the company's contention

1
2 that they have not mismanaged the construction of
3 the plant and the actual facts as brought to the
4 regulatory process in evidence submitted by a
5 number of parties, I would say the company has
6 been less than truthful about Shoreham to the
7 public, to the regulators.

8 Q. Does any part of your opinion that the
9 plant is unsafe to operate derive from your view
10 that there has been mismanagement on the part of
11 LILCO's management?

12 A. Yes. I know if I had a plumber who had
13 told me that the job of fixing my toilet was going
14 to be \$12 at my house and it actually wound up to
15 be over \$1,000, that plumber would not be rehired,
16 or I surely wouldn't trust that plumber to come
17 back to my home again. Actually I recently had
18 that experience when I was in Albany, and my
19 fiancée had a plumber over the house and the
20 plumber said it was going to cost a certain amount
21 of money and it cost something like six times
22 beyond that. That plumber will never see my house
23 again. I would say the same theory would apply to
24 Shoreham.

25 Q. Are you aware of the reasons for the

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cost increases?

A. Yes.

Q. What are they?

A. Mismanagement.

Q. Anything else?

A. Mismanagement.

Q. Anything other than mismanagement of which you are aware?

A. No. I would include in that a broad, in other words as an example, the inability of LILCO to cope with the regulatory process or to be prepared with the regulatory process. That would be included in that mismanagement aspect.

Q. Let's talk about that. One of the issues you alluded to a little bit earlier was the lack of an emergency evacuation plan, and I take it you are familiar with the fact that that is one of the remaining issues to be resolved in the licensing proceedings.

A. Yes.

Q. Do you blame LILCO for the lack of an emergency evacuation plan and blame that on mismanagement?

A. Yes.

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Q. Why?

A. Because I feel that Long Island Lighting Company did not prepare before they built the plant an emergency response plan that would be acceptable.

Q. Do you base that on your own personal opinion?

A. Yes.

Q. Are you aware of when Suffolk County first decided that it would not participate in the formulation of an emergency plan?

MR. LANPHER: I object to that question.

A. What does that mean?

Q. He objects to preserve the record.

MR. LANPHER: Do you want me to explain why it is wrong?

A. I am a little unused to this kind of thing. Usually there is an administrative law judge who says something. How does that work here?

MR. LANPHER: You go ahead and answer.

A. Will you repeat the question.

Q. Are you aware of what Suffolk County's position is with respect to the formulation of emergency evacuation?

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A. I am generally aware.

Q. What is your understanding of that position?

A. That they do not believe that the emergency plan or any emergency plan is acceptable for Shoreham.

Q. Do you know when Suffolk County first espoused that position?

A. First espoused that position? No, I don't.

Q. Do you have any knowledge of specific aspects of the mismanagement which you perceived which impacts specifically on the ability to conduct low power testing?

A. Yes. Our agency in conjunction with Suffolk County filed a document which you are welcome to have which lists some of the major charges of mismanagement that I feel would affect the company's ability to operate the plant.

Q. Where was that filed?

A. It was filed with the Public Service Commission in both Albany and New York City.

Q. Do you have a copy of it here in New York City?

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2 A. We don't. The Public Service
3 Commission may have it.

4 MR. LEVINE: For your information, they
5 are on the 24th floor. I am sorry, they are 400
6 Broome Street. Everybody has moved.

7 Q. What is the title of that paper that
8 was filed?

9 A. I don't know that it was a title. It
10 was testimony and exhibits filed by the New York
11 State Consumer Protection Board, the County of
12 Suffolk and Long Island Citizens in Action on the
13 prudence of expenditures at Shoreham. I don't
14 know that there was a title.

15 I might also add that I have also read --
16 I won't say I read every page, but I read pretty
17 thoroughly the report, and I mean testimony and
18 exhibits filed by the staff of the Public Service
19 Commission, on that same issue. That testimony is
20 also available at the Public Service Commission.

21 Q. Does any of that testimony distinguish
22 between LILCO's ability to operate the plant
23 overall and its ability to conduct low power
24 testing as a separate aspect of operation?

25 A. I don't know.

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Q. Can you express in your opinion, do you make that distinction?

A. I would say yes, based upon the economics involved, based upon the fact that -- yes.

Q. We are going to come to economics in a minute. Let me stick to the mismanagement allegation first.

Do you make that distinction with respect to your perception of LILCO's inability to adequately manage the company as it impacts upon operation of the plant?

A. Yes.

Q. Describe for me how you make that distinction.

A. Obviously I am aware of the current management there, and I feel that management at the company has attempted based upon that testimony and my own experience to cut corners. I think this would be another example of them cutting corners and compromising the safety of the people of Long Island.

Q. Do you have any knowledge of specific corners, to use your language, that might be cut

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in low power testing?

A. Yes. They will not have a proved emergency response plan, and they will not have working back-up diesel generators.

Q. Any others?

A. I say those are the two major ones. Yes, I think also a third. It may force them to cut corners in providing safe and adequate service to their customers because again based upon the austerity plan that the company has invoked that I have knowledge of, there have been no cuts in the nuclear area, and I think this would put more pressure in the nuclear area for them to put more people in that and thus take away people from providing safe and reliable service, and I think that is cutting corners with service that people receive every day in their homes and businesses in Long Island.

Q. Are there any other areas other than the lack of an emergency plan, the lack of TDI or approved diesel generators, and the fear that you have that LILCO may have to cut its service to its customers as a result of the nuclear effort?

A. None that I know of at this time.

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2 Q. Would the impact of timing on your
3 opinion change your fear that the customers might
4 somehow suffer cutbacks in service as a result of
5 conducting low power testing at Shoreham?

6 MR. LEVINE: The impact of what?

7 MR. ROLFE: Timing. I will try to
8 rephrase the question.

9 Q. You stated that one of your fears was
10 that conducting low power testing at Shoreham
11 might lead to a reduction in service to LILCO's
12 customers because of the resources that would have
13 to be devoted to the Shoreham effort.

14 Does that fear that you have change at
15 all with the timing that low power testing is
16 conducted?

17 A. When you say timing, do you mean when
18 that is physically done?

19 Q. Yes.

20 A. No.

21 Q. So in other words, you don't have that
22 concern whether low power testing is conducted
23 within the next three months or within the next
24 ten months, for example?

25 A. Yes, especially in light of the company

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austerity program. I would think that the company's austerity program, according to the company's witnesses in the rate case, will last for a minimum of a year, and so I would assume that the conditions would be the same, whether it were now or three months from now or ten months from now.

Q. If I understood you properly, one of the other reasons that you felt a burden might be imposed on the rate payers as a result of this exemption was the possibility that no commercial license might be granted and that LILCO would then have to incur certain costs attendant to decommission the plant; is that accurate?

A. That was one aspect, yes. That wouldn't be the only cost, but I would say that would be one aspect of it.

Q. Do you have any knowledge as to the amount of those decommissioning costs?

A. I don't have any knowledge on the specifics because of the timing involved. I have reviewed decommissioning costs in Con Edison's rate cases and also in LILCO's rate cases. Assuming that the plant were operational for a

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certain number of years and then went off and had to be decommissioned.

In this instance I would assume that the cost would be somewhat less because of the shorter time period and the reduction in contamination. What the exact numbers are, I don't know, but I would have to assume based upon just the initial cost of any decommissioning that you are talking about millions of dollars. I mean I have read that Atomic Industrial Forum study and a number of other studies on decommissioning. This would be a very unusual decommissioning because the plant would not have operated commercially.

Q. Correct me if I am wrong. I am just trying to make sure that I understand what your concern is. Your concern arises from the possibility that a commercial license might not be granted.

A. Correct.

Q. And that at the same time low power testing will have been begun and therefore fuel will have been loaded and operations conducted.

A. That is correct, and that the plant

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would be contaminated. I think right now if you were to scrap the plant and it weren't contaminated, it would be a lot easier than once it were contaminated.

Q. Another possibility of increased costs that I believe you cited earlier as possibly constituting a burden on the rate payers was the possibility of demonstrations if Shoreham opened?

A. Correct.

Q. Is there any aspect of the exemption request that would lead to greater demonstrations than otherwise?

A. I think so. I think the public, especially the antinuclear public on Long Island, would see an exemption as an insult, a direct insult in a government agency allowing LILCO to cut a corner, which those demonstrators feel shouldn't be cut, and I think it would lead to more vociferous demonstrations. I think it would lead to a lot more people opposing Shoreham in the form of demonstrations, and I think it would add considerably to the cost.

I think a lot of people who normally wouldn't go to a demonstration at Shoreham or at

1
2 LILCO, if they saw that an exemption were granted
3 to the normal rules and regulations, I think they
4 would be motivated to attend that demonstration
5 and increase the numbers sizably.

6 Q. Do you base that on your own personal
7 opinion?

8 A. I base that on my personal opinion, my
9 knowledge of demonstrations on Shoreham for many
10 years, my knowledge of the types of people who
11 demonstrate, my knowledge of the people who
12 demonstrate.

13 I would say I have a lot of personal
14 knowledge. I have appeared in several
15 demonstrations myself. I think I know what
16 motivates people. It is my job.

17 Q. You think that those demonstrations
18 would be larger, even though the NRC would have
19 conducted hearings and, presumably before an
20 exemption is granted, adjudged the plant to be
21 safe for that operation?

22 A. Yes. I don't think there is too much
23 faith on the part of those people in the process,
24 in the Nuclear Regulatory Commission's
25 impartiality, and I think they would be much

1
2 larger.

3 Q. Is there anything that leads you to
4 believe that "those people," who I assume are the
5 demonstrators, have any greater expertise than the
6 NRC to adjudge the safety of the plant?

7 A. I don't want to judge their expertise.
8 I think some of them are brilliant and I think
9 probably a number of them have greater expertise
10 than the NRC.

11 Q. In matters of nuclear safety?

12 A. I would say some of them probably do.
13 I think you have to remember they live near the
14 plant and the NRC doesn't. Sometimes that gives
15 them a lot more credibility than people who judge
16 things from far away.

17 Q. So you think the demonstrations would
18 be less severe if low power testing were conducted
19 once the TDI diesel generators are adjudged to be
20 qualified?

21 A. When you say demonstrations, I would
22 assume that there would need to be a purpose for a
23 demonstration. Let's say as an example that LILCO
24 did not get an exception and did not get a low
25 power license and that was it. I don't think

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there would be demonstrations. In other words there are alternatives to what you said. If the company were to get an exemption, I think there would be very sizable demonstrations based upon what I said before.

So it depends upon the circumstance and what was the final result. I don't think people demonstrate for nothing, although some people do. There is a small minority of people who demonstrate on anything, but I don't think these people are like that, so when you say a sizable increase, that is assuming that there would be a demonstration if there were no exemption and were no license, and I don't know that. I am not going to say it couldn't happen, but I don't know that.

Q. I am just trying to find out what the basis for your opinion is. Do you think there would be demonstrations if low power testing were conducted pursuant to a license that was not predicated on an exemption?

A. I would think there would be demonstrations, yes.

Q. But you think the granting of an exemption would cause the demonstrations to be

1
2 more severe than they would be if there were just
3 low power testing conducted otherwise?

4 A. Absolutely.

5 Q. Do you know what the extra security
6 costs would be?

7 A. I don't know specifically what the
8 extra security costs would be. I would think that
9 based up. . past experiences, it would run into the
10 millions of dollars. When I say experiences, I
11 mean past demonstrations. I think this would be
12 larger, so I think it would cost a lot more.

13 Q. Do you have any responsibility for
14 security precautions to deal with such
15 demonstrations?

16 A. What do you mean by that?

17 Q. Does the New York State Consumer
18 Protection Board involve itself in dealing with
19 law enforcement agencies to either anticipate or
20 deal with demonstrations?

21 A. I would say no, unless we were asked.

22 Q. I take it you don't have any special
23 background in that area?

24 A. Law enforcement?

25 Q. Yes.

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2 A. I would say -- well, I enforce the law
3 on my own, but I would say no. Although I would
4 say that I do have experience in following what it
5 costs LILCO to pay for demonstrations because
6 usually that money is sought in rate cases and I
7 review those rate cases, so although I don't have
8 specific expertise in dealing with the
9 demonstration security themselves, you have to
10 remember that my agency eventually must make a
11 recommendation on the cost, so we have reviewed
12 cost figures in the past and will continue to
13 review them in the future, as to the
14 appropriateness of the expenditures, as to the
15 amount of the expenditures, as to whether the
16 expenditures should be included in the rate base
17 or not.

18 Q. Assume with me for a minute, because I
19 don't want to get into an argument with anybody
20 about what the NRC's regulations allow or don't
21 allow or whatever, but assume with me for a minute
22 that LILCO, once it has qualified on-site diesel
23 generators, will have the right to engage in low
24 power testing with nothing further.

25 A. Am I assuming that there is also an

1
2 accepted emergency response plan?

3 Q. No. Just assume with me that that
4 right will exist when LILCO has qualified diesel
5 generators on site. Further assume that the
6 purpose of the exemption request is to allow low
7 power testing to be conducted prior to the
8 qualification of on-site diesel generators.

9 MR. LANPHER: The first assumption is
10 just assume that they have the right once they are
11 qualified?

12 MR. ROLFE: That is correct.

13 MR. LANPHER: Thank you.

14 Q. Are you with me so far?

15 A. Yes, I think so.

16 Q. Of the factors that I understand you to
17 say lead to your conclusion that the granting of
18 this exemption will constitute a burden on the
19 rate payers, the only one that I understand will
20 increase because of the earlier performance of low
21 power testing is the possibility of demonstrations
22 and the attendant security cost. Am I accurate?

23 A. I don't think so because I think that
24 again, you are not making the assumption that the
25 plant is going to be, or are you making the

1
2 assumption that the plant is going to be getting a
3 commercial license? Are you making that?

4 Q. No, I am not making that assumption.

5 A. Then I couldn't agree with that
6 statement because if you are not making that
7 assumption, then you are talking about costs such
8 as the decommissioning costs of a contaminated
9 plant, the inability to sell at full value the
10 cost of fuel that hadn't been used as opposed to
11 been used, the inability to sell parts of the
12 plant that may not have been used as opposed to
13 parts that have been used. I would say that those
14 are other factors involved there in addition to
15 the security costs.

16 Q. Those other factors will be there at
17 any time the plant conducts low power testing
18 before a full power operational license is granted,
19 won't they?

20 A. Those factors would be there. However,
21 again, there is no indication that there would be
22 a commercial operating license, so that if those
23 factors -- so that if it wasn't a commercial
24 operating license, I would not want to balance the
25 cost of that money or the cost of those things

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2 such as the decommissioning, et cetera, with the
3 chance that the plant may never get operated again,
4 may never be operated commercially.

5 Q. I understand what you are saying there.
6 I guess what I am asking you is just to try to get
7 a little bit more particular. Remember my
8 assumptions, and my assumption was one, that the
9 plant will be able to engage in low power testing
10 without an exemption once qualified on-site diesel
11 generators have been qualified, without an
12 emergency plan, without a full power license.

13 A. Right.

14 Q. In that scenario you would still have
15 the risk, would you not, of not getting a full
16 power license and that you would have to incur
17 these decommissioning costs?

18 A. Yes, I understand. I didn't really
19 understand the question.

20 MR. LEVINE: If you want a minute or
21 two, if you want to stop for a few minutes.

22 (Discussion off the record.)

23 (Recess taken.)

24 Q. The second broad factor that I believe
25 you enumerated as leading to your opinion that the

1
2 granting of this exemption was not in the public
3 interest was your belief that based on your
4 experience in construction, I believe you said,
5 that LILCO was unable to properly construct the
6 plant and that the plant was poorly managed.

7 We may have already covered this when
8 we were talking about the burden on the rate
9 payers and your personal opinion about safety of
10 the plant. Are there any aspects of LILCO's
11 inability to properly construct the plant as you
12 perceive it that we haven't discussed?

13 MR. LEVINE: May I state a short
14 objection just to correct the language. I don't
15 think he ever mentioned his ability or his
16 experience in construction. I think he said his
17 ability in overseeing LILCO's history of
18 construction.

19 A. Right, I am not a construction worker.

20 Q. With that caveat.

21 A. No.

22 Q. So we covered all the construction
23 issues that you perceive?

24 A. Yes. Well, we have covered them either
25 specifically or in general in the context of the

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reports that I mentioned before. We have covered all that.

Q. The reports that you mentioned were the pre-file testimony in the PSC case?

A. Yes, the prudency case.

Q. The prudency case before the Public Service Commission?

A. Correct.

Q. Would that also be true for the poor management aspect of that facet of your opinion?

A. I think we have covered that also, yes.

Q. The third basis for your testimony I understood to be your fear that the granting of the exemption might add to the nuclear budget and detract from other operations of the company and the company's ability to serve its customers.

A. Correct.

Q. Have you performed any studies to verify that fear?

A. My staff and I have reviewed the company's austerity program and we have surely analyzed and studied the testimony that has been filed in the current rate case regarding the austerity plan, and based upon those studies and

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analyses I have made that conclusion.

Q. Are there any special additional costs of which you are aware arising from the granting of this exemption and LILCO's concomitant performance in low power testing as opposed to simply the performance of low power testing without the exemption?

A. Yes, I think that if the exemption were granted, you are talking about starting the testing at an earlier time. Therefore the cost on an annualized basis would be greater to the company.

Furthermore, again, if you were to be granted -- if LILCO were to be granted the exemption at an earlier time, based upon their current financial condition, I think that it would put a severe squeeze on the company's financial resources at a time when the company is running out of money. If there were more time elapsed, that may not be such, because of the possibility of LILCO getting beyond those problems, so I think timing is extremely important and critical, and obviously if the company had a cash flow problem, they would solve that like they have solved it

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2 recently, and that is to cut back on the daily O
3 and M expenditures as opposed to the nuclear
4 budget.

5 In my opinion that would decrease the
6 efficiency of service and possibly put the company
7 in jeopardy of providing safe and adequate service.
8 I think the timing is critical, and I think that
9 granting an exemption in my mind is speeding up
10 the timing by which LILCO would be able to low
11 power test, and in my opinion financially they
12 couldn't withstand that without affecting safe and
13 reliable service on a daily basis to its customers,
14 to their customers.

15 Q. In your opinion LILCO would be better
16 able to withstand that cost at a later date?

17 A. If they were able to, they would be
18 better able at a later date.

19 Q. If they were able to what?

20 A. If they were able to withstand testing
21 at all, the later the date, I think the better off
22 they would be and the better off they would be in
23 terms of not having to cut back on their service
24 to the customer.

25 Q. Explain the basis for that opinion that

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the timing has such an impact.

A. Let's take a hypothetical, that LILCO were forced or LILCO were granted an exemption on September 1 as opposed to being granted an exemption on December 1, as a hypothetical.

On December 1 LILCO might have the benefit of receiving rate relief from the Public Service Commission, whereas they might not have that benefit on September 1, the rate relief that would allow them -- I am not saying I support the rate relief, but again in a hypothetical, the rate relief that would allow them to spend money on O and M expenditures under a normal basis.

I think that over the next six months there are many financial decisions that have to be made by the Public Service Commission and the financial community that affect Long Island Lighting, and I think that until those decisions are made, there is going to be a severe cash shortage that the company is going to experience, and granted an exemption, I think, would exacerbate that cash shortage against the best interests of the rate payers in terms of receiving safe and reliable service.

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2 Q. Is your belief that the granting of the
3 exemption would exacerbate the cash shortage
4 predicated on your belief that there would be
5 increased costs incurred in connection with the
6 low power testing?

7 A. I would say that is one factor.

8 Q. What are the others?

9 A. I would say another factor is
10 experience, that when the company initiated its
11 austerity plan, it let go employees in every area
12 of the company except nuclear, and I would expect
13 that the exemption might require more funding in
14 the nuclear area -- based upon their current
15 budget levels, as I reviewed them, would force the
16 company to fire or let go more people, and based
17 upon the company's announcing that they were
18 absolutely not going to fire anyone, now or in the
19 future in the nuclear area, I would expect that
20 those people that were let go would be let go in
21 the other areas which do affect daily operation
22 and maintenance of the system.

23 Q. Why do you think there will be
24 increased cost in the nuclear area once low power
25 testing begins?

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2 A. I think there would be increased costs
3 because the company would be engaging in new
4 practices on a daily basis. I think they would
5 need new employees. I think they would probably
6 hire outside experts as well as contracted
7 employees to make sure that the testing went well.
8 I would think they would probably have to hire
9 public relations people alone in the nuclear area
10 to make sure that this was acceptable to the
11 public, and I think that would result in increased
12 costs.

13 Let me say that those increased costs
14 would be far greater if the plant did not receive
15 a commercial license because again you would be
16 dirtying a clean plant, and that would increase
17 the costs to the company, and I think that based
18 upon that alone, the company could come in for a
19 rate increase based upon decommissioning, based
20 upon other factors, and even if those rates were
21 amortized over a certain number of years, that is
22 something that they really probably couldn't do
23 now, as opposed to doing it once the plant were
24 testing for low power. The exemption would move
25 it that much closer.

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2 Q. Do you have any knowledge as to the
3 amount of increased expenditures that you believe
4 would be incurred if low power testing begins?

5 A. No.

6 Q. Do you in fact know that additional
7 operators or any other personnel would have to be
8 hired?

9 A. I would say based upon what I have read,
10 based upon announcements that I have read. That
11 is how I would say that there would be an
12 increased cost.

13 Q. What announcements have you read that
14 say that additional personnel would have to be
15 hired for low power testing?

16 A. Statements made by former chairman of
17 the board Charles Pearce, statements made by
18 several board members and company officers over
19 the last few years when a low power license has
20 been discussed in the news a lot.

21 Q. What exactly did they say?

22 A. You would have to ask them, but
23 generally what I got out of what they said was
24 that they would need more manpower to test out
25 plants at low power than they currently have, and

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2 that some of that manpower is in terms of hiring
3 operators that they don't have on site.

4 I know right now, as an example, they
5 said they're having difficulty to operate the
6 plant even at low power because a lot of people
7 don't think the plant is ever going to operate,
8 and assuming you granted them an exemption and
9 assuming that the plant went to test low power,
10 people would have to be hired, and people that
11 they don't have now, and that would add to the
12 cost of the company.

13 Q. Who made that statement?

14 A. Who made what statement?

15 Q. The statement the right now additional
16 operators need to be hired before low power
17 testing can be conducted.

18 A. I don't know his name, but the ex and
19 the new person in charge of the nuclear aspect of
20 Shoreham have made that statement very recently.

21 Q. Where did you see it or hear it?

22 A. In the newspapers. I may have heard it
23 on the radio also, but primarily the newspapers.

24 Q. Do you know of your own knowledge
25 whether LILCO has a full staff of operators ready

1
2 to conduct low power testing on the payroll now?

3 A. Based on my own knowledge, I would have
4 to say no, since I don't work out of the plant.

5 Q. Do you have any personal knowledge of
6 any increased costs which LILCO will have to incur
7 as a result of low power testing?

8 A. Let me say this to you. I have watched
9 LILCO construct the plant for ten years. I have
10 been involved in almost every rate case, and if
11 that were personal knowledge, I would say that
12 everything LILCO ever does costs more money, so I
13 wouldn't see why this would be any different. I
14 would say that is direct personal knowledge, being
15 involved in all of the rate cases that I have been
16 involved in.

17 Q. That is a personal deduction based on
18 past experience. I understand, but do you have
19 any personal knowledge of any specific increased
20 costs LILCO will incur when it begins low power
21 testing pursuant to this exemption?

22 A. Beyond what I have told you already?

23 Q. You haven't told me any already.

24 A. I think I have. I think I have told
25 you of the need for operators and other things.

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2 When you say personal knowledge, let's be clear.
3 According to my qualifications I don't work for
4 the company. Short of working for the company, I
5 couldn't possibly have that personal knowledge,
6 but based upon what I have read, what the company
7 has stated, their past experience in rate cases,
8 their past experience in constructing the plant,
9 which I consider to be a wealth of experience, I
10 would say that there is going to be increased
11 costs. Do I have personal knowledge, am I going
12 to be hiring those people or making those
13 decisions? No, of course not.

14 Let me just interject, it is like a
15 candy store. If I were to buy or build a candy
16 store from the bottom up, I would have to hire
17 people to construct it. I probably wouldn't hire
18 someone to work the counter until the store was
19 open.

20 Q. You don't know whether LILCO has those
21 operators, for example, on its payroll now.

22 A. When you say I don't know, based upon
23 what I have read, based upon the staffing level of
24 what I have read, I do know. Based upon working
25 at the company and knowing their names, the answer

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would be no.

Q. Again I was just asking for your personal knowledge as opposed to what you may have heard or read as reported in the press.

A. When you say in the press, a lot of the information that I have discussed here I have gotten out of statements made by company witnesses on the stand in rate cases also. In other words not everything I have told you here is based upon what I have read in the press.

I have heard some of the statements made personally at shareholder meetings. I have heard some of the statements that I have said today said on the stand under cross-examination at rate cases. I don't know that it is all in the press. A lot of it is based upon the company's own presentations.

Q. Let me help you so you and I will be on the same wavelength in future questions. When I speak of personal knowledge, I mean things that you know of your own personal experience, knowledge, first-hand information as distinguished from anything you have heard, read or been told from others.

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2 A. Let me say this to you. Unless I were
3 an employee of LILCO, personal knowledge I
4 wouldn't have, but if a company witness speaks
5 under oath on the stand, I would assume that that
6 information were correct, to the best of his or
7 her knowledge at the time that he made it. You
8 don't consider that personal knowledge.

9 Q. Not by me.

10 A. The only way that there could be
11 personal knowledge is if I were an employee of
12 LILCO, and then I wouldn't be testifying here
13 today against LILCO, so it doesn't really make
14 much sense, but I understand what you are saying.

15 Q. Have you heard any LILCO witnesses
16 testify that there will be increased costs
17 directly attributable to the engaging of low power
18 testing as a result of this exemption being
19 granted?

20 A. I have heard over the years witnesses
21 testify to that fact.

22 Q. I don't think you heard my question. I
23 said as a result of the exemption being granted.

24 A. I am sorry, I didn't hear that. No.

25 Q. What witnesses have you heard testify

1
2 generally about increased costs attendant to low
3 power testing?

4 A. I wouldn't remember their names offhand.

5 Q. Where did you hear the testimony?

6 A. At LILCO rate proceedings.

7 Q. You said that LILCO might be better off
8 waiting until later to conduct the low power
9 testing because its financial condition, as you
10 perceive it, might be ameliorated, and one of the
11 things you mentioned the possibility of would be a
12 request for rate relief which might be granted.

13 A. That is one possibility.

14 Q. Is there any such pending request for
15 rate relief?

16 A. Yes, there is.

17 Q. Has it been adjudicated yet?

18 A. No, it hasn't.

19 Q. What is the position of your agency
20 with respect to that request?

21 A. We have been opposed to the granting of
22 any increase, and we have supported actually a
23 decrease of approximately \$98 million.

24 Q. So based on the position your agency is
25 taking, LILCO would clearly not be in a better

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position to wait.

A. Based upon the position our agency has taken, I would say that is true. However, based upon the current status of the case and the recommendations of the administrative law judge, I would say it is more likely that the company may get some rate relief.

Q. What is the position of the administrative law judge?

A. He has recommended that the Commission grant LILCO the full request of \$281 million.

Q. Effective when?

A. He didn't say. I think he said effective as soon as possible. He didn't really give an effective date.

Q. So if that were the case and that decision were to be implemented, there wouldn't be any need to wait to conduct low power testing, would there?

A. I think there would be because there is nothing -- first of all, we don't know the timing of that increase. Second of all, we don't know that LILCO wouldn't come in for another emergency rate increase immediately following that that

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would have to be adjudicated as well.

MR. LEVINE: That was a hypothetical, right?

MR. ROLFE: Yes.

Q. So what you are saying is that any possibility of future rate increases, to the extent they were granted, would improve the company's position and therefore you think the company would be better off if it waited to conduct low power testing until they could get in as good a financial condition as they possibly could be put in?

A. I would say that is true. That is not to say that I support rate relief for the company. I don't, but based upon the reality of the situation, I would say that was true.

Q. Have you taken into consideration any possibility that the granting of this license might improve LILCO's financial condition by giving it additional access to financial markets?

A. I have taken that into consideration, yes.

Q. Do you have an opinion as to whether that is true?

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A. I think it is not true.

Q. Why do you think so?

A. Because I think the uncertainty would be there until the plant got a commercial operating license, and I don't believe that the uncertainty would be reduced by granting an exemption.

Q. Again is that based on your own personal opinion or do you have any contacts with lenders that would lead you to that conclusion?

A. I would say it is based upon my own personal opinion. I have some contacts with lenders, and I have talked to some lenders. My staff has talked to some lenders. It is based on a number of those facts. Also reports that I have read in the press from lenders who have commented on that issue, so it is a combination.

Q. Can you give me any specifics of what you have read in the press concerning that issue?

A. I recollect reading in the press that lenders would probably not be satisfied or have faith in the company until a commercial operating license were granted and that intermediate steps at this point would not be too helpful.

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Q. Do you know who said that?

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A. I don't remember.

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Q. Do you know when you read it?

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A. Very recently. I have read it

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continually, but very recently. I have read it

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within the last couple of weeks.

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Q. Other than what you read in the press,

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have you seen or been privy to any reports

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concerning LILCO's financial condition that

11

discussed the ability of LILCO to gain additional

12

financing and the impact of this low power license?

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A. I am a stockholder in the company, so I

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have read the annual report of the company.

15

Q. Does that bear at all on this issue?

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A. I think it bears somewhat on this issue,

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on its financing needs.

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Q. Does it discuss at all the possibility

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that the granting of an exemption to LILCO to

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conduct low power licensing or the granting of any

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low power license might improve the company's

22

ability to gain that additional financing?

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A. I don't recall.

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Q. Have you seen any other reports or

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discussions of that issue?

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2 A. I wouldn't want to say absolutely no
3 because I read a lot of reports that come before
4 me as head of the Consumer Protection Board, and I
5 could have read reports such as that. I don't
6 know for certain.

7 Q. I take it you don't recall any right
8 now?

9 A. I don't recall any specific reports.

10 Q. Has your agency studied that issue?

11 MR. LEVINE: Could I just respond for a
12 second? I believe that is consistent with the
13 testimony of company witnesses Crews and Wiggin,
14 from the various banking houses, whose position
15 was that these were not relevant. The investors
16 were looking at the Commission decision. They
17 weren't terribly concerned or were going to make a
18 decision on low power testing license one way or
19 the other. They were looking for rate relief.

20 A. I have read that testimony and that is
21 testimony that was filed as an update in the LILCO
22 rate cases by LILCO.

23 Q. In the rate cases?

24 A. Yes.

25 Q. And they were LILCO witnesses?

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2 A. They were LILCO witnesses. They were
3 not working for LILCO. In other words not
4 employees. They were consultants.

5 MR. LEVINE: One of them is from Paine
6 Webber.

7 Q. The substance of their testimony was
8 what?

9 A. The substance of their testimony was
10 basically that the factors of an exemption or any
11 other factors in that area would not be relevant
12 to their gaining access to the financial market at
13 an earlier date.

14 MR. LEVINE: We are playing now with
15 recollection. I think it was more related to the
16 fact that the essential factor was the signal of
17 the Commission, and that everything else was
18 secondary, "signal" meaning a commission decision
19 regarding the rate issue.

20 (Discussion off the record.).

21 Q. In our discussion off the record I
22 understood that you or your counsel's recollection
23 was of the testimony as given in the rate case by
24 LILCO's sponsoring witnesses, not necessarily
25 LILCO employees.

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2 MR. LEVINE: Except for Mr. Sideris,
3 the vice president of LILCO.

4 Q. It was that a signal from the PSC
5 concerning the rate increase was the single most
6 important factor for LILCO's gaining additional
7 financing. Is that accurate?

8 A. I would say that is so.

9 Q. In the course of that testimony did
10 they discuss the need for a low power license as a
11 secondarily important factor? If you don't recall,
12 please tell me you don't recall.

13 A. I don't recall.

14 MR. LEVINE: I would be perfectly
15 willing to be sworn, if you like.

16 Q. Would it be fair to say that the timing
17 aspects of the extent to which low power testing
18 might detract from LILCO's other services to its
19 customers is speculative and depends on a lot of
20 different factors, for example the granting or not
21 granting of the rate relief?

22 A. I don't know that I would call it
23 speculative, because eventually those decisions
24 have to be made, but they surely are dependent
25 upon external forces.

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Q. Which can't be predicted with any accuracy?

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A. Which can be predicted with some accuracy within a certain sphere of time, but not as to the specific date or time, that is correct.

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MR. LEVINE: Just to clarify the record, the company would not give a specific austerity budget-related cost saving in the rate year. They said it was 60 to \$80 million. Because they indicated it was so difficult to project these costs, they did not indicate how high the austerity budget-related measures, how costly they may be in the rate year.

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Q. Am I right that in dealing with the austerity-related measures and the inability to predict the financial impact, that all relates to LILCO's non-nuclear operation; is that right?

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A. The austerity cuts were made in the non-nuclear area, that is correct. I don't know that you can totally separate in a company its nuclear from non-nuclear in terms of its overall impact. Yes, the austerity cuts were made only in the non-nuclear area.

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Q. Do you intend to express any opinion

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2 concerning any public interest aspects to the
3 displacement of oil that might result from the
4 opening of Shoreham?

5 A. No.

6 Q. Do you intend to express any opinion --

7 A. Can I say, by saying no, that doesn't
8 mean that I agree or don't agree with that
9 statement.

10 Q. I am simply asking whether you intend
11 to sponsor any testimony in that regard.

12 A. Fine.

13 Q. Do you intend to express any testimony
14 in the low power licensing hearings concerning
15 LILCO's claim that granting of the exemption might
16 have certain training benefits with respect to its
17 operators?

18 A. No.

19 Q. Do you intend to express any opinion or
20 offer any testimony in the low power licensing
21 proceedings concerning LILCO's good faith efforts
22 to comply with the regulations from which it seeks
23 an exemption?

24 A. No.

25 Q. Do the opinions which you do intend to

1
2 express in the low power licensing proceedings
3 represent your own personal opinions, or are those
4 official views of the agency?

5 A. Those are official views of the agency.

6 Q. Have they been formulated by the agency?

7 A. Yes.

8 Q. Has the agency received any direction
9 from the Governor concerning those views?

10 MR. LEVINE: Can you define what you
11 mean by "direction" first? I don't quite
12 understand the word.

13 MR. PALOMINO: First of all I want to
14 claim executive privilege, if he did. Secondly,
15 if you want to explain what you mean, it might
16 make it easy.

17 A. I am not sure I understand what you
18 mean by that.

19 Q. I don't know how to be more specific,
20 because I don't know what form the direction might
21 take.

22 A. Could you repeat the question?

23 Q. Has the agency received any direction
24 from the Governor with respect to the views which
25 you intend to express at the --

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2 MR. PALOMINO: Are you asking did the
3 Governor suggest what positions he should take?
4 Is that what you are asking?

5 MR. ROLFE: Yes.

6 A. Has the Governor suggested positions I
7 could take? I would say yes. The Governor and I
8 have talked on a number of occasions for a number
9 of years on many issues. Has he specifically
10 directed me to take one position as opposed to
11 another, I would say no.

12 Q. What suggestions did the Governor give
13 you concerning positions you might take?

14 A. I really wouldn't -- I would say that
15 the Governor has asked me to review the impact of
16 the Shoreham plant on the rate payers of Long
17 Island. The Governor has never -- you have to
18 understand that I have to separate Mario Cuomo
19 from the Governor because I have talked to Mario
20 Cuomo about Shoreham for five or six years, and
21 there has been an evolving discussion about
22 Shoreham and my feelings and his feelings, so I
23 don't know in all of that time that the Governor
24 has ever instructed me to do anything.

25 The Governor has made suggestions. I

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have made suggestions to the governor.

Q. Has the Governor made any suggestions with respect to your participation in the low power licensing proceedings specifically?

A. To me directly?

Q. Yes.

A. No.

Q. To anyone in your agency?

A. Not as far as I know.

Q. Has your agency issued any reports or any written documents in any way commenting on the exemption request?

A. No, we have not issued up to this point anything.

Q. Do you intend to issue any such documentation?

A. I think we do intend to file testimony.

Q. Other than testimony.

A. I would say at this particular point, I would not know. I really wouldn't know. I couldn't say definitively yes or no.

Q. Has your agency issued any reports or any kind of written documentation concerning the issue of low power testing at Shoreham?

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2 A. Indirectly, I am sure we have. I don't
3 know we have issued reports, but we may have made
4 public statements on that.

5 MR. LEVINE: By reports you mean
6 written documents?

7 MR. ROLFE: Any kind of written
8 document.

9 A. We may have issued a press release or
10 something. Nothing beyond that, though.

11 Q. Does the agency have an official
12 position paper or any other kind of report
13 discussing its views as to whether Shoreham should
14 operate in any facet?

15 A. We have filed a considerable amount of
16 testimony over the years in rate cases, and I
17 would say that would contain our views on Shoreham.

18 Q. Is there anything other than your
19 testimony?

20 MR. LEVINE: Obviously the prudency
21 proceeding.

22 A. The work we have done in the prudency
23 investigation.

24 Q. Which culminated in testimony?

25 A. And exhibits, correct. The briefs that

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we have filed in those proceedings. I would say those are the positions that we have taken.

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Beyond that -- let me say this. We may have also --

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I have published, as I said to you earlier in the

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beginnings of this, I have published some articles

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on Shoreham which I think pretty much clarifies

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our position on it. Some of them have been

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lengthy enough to call it a position paper,

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particularly the one that we published last week.

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Q. Was the one last week the one that was

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in Newsday, June 27?

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A. Around June 27, right.

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Q. Did you author that article?

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A. Yes, the article that we are referring

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to?

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Q. Yes, the article that appeared in

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Newsday on June 27, 1984.

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A. Yes.

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Q. Do you intend to express any opinions

21

or proffer any testimony at the low power

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licensing hearings concerning the status of the

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construction at Shoreham?

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A. Not to the best of my knowledge.

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MR. LEVINE: Can you clarify what you

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mean by "status of the construction"?

MR. ROLFE: Whether it is complete or the extent to which it may be completed.

A. Not to the best of my knowledge.

Q. I understood you earlier to say one of the reasons you don't think the plant is safe is because of some views you hold concerning its inadequate construction.

A. Correct. That is different than what you just asked.

Q. Right. In discussing the burden on the rate payers, do you intend to quantify that burden in any fashion in your testimony?

A. That is possible. I don't know at this particular point.

Q. Have you formulated such a quantification?

A. When you say have we formulated --

MR. LEVINE: You mean specific numbers?

MR. ROLFE: Yes.

A. I would say in the course of rate cases we have. Those numbers could surely be extrapolated and used in this proceeding. Whether we will do that or not, I couldn't tell you now.

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2 Q. If you were to do that, do you know
3 which numbers you would use? By that I mean I
4 understand there are various rate proposals under
5 consideration as to how Shoreham will be treated
6 if a license is granted.

7 A. I don't know at this time what specific
8 numbers we would use. That is something that
9 would have to be the subject of analysis by my
10 staff and review by myself.

11 Q. That has not been done at this time?

12 A. That is correct.

13 Q. Has your staff or anyone at your agency
14 performed any comparison of the rate increases or
15 cost to the customer between Shoreham coming on
16 line three months earlier as a result of getting
17 low power testing completed pursuant to the
18 granting of an exemption and Shoreham coming on
19 line later because low power testing was completed
20 after a full power operating license was granted?

21 MR. LEVINE: I don't think we have done
22 the specific analysis. However, the company's own
23 numbers indicate, all things being equal, \$40
24 million a month as the difference.

25 A. We surely have done analyses in the

1
2 past and continue to do analyses of the monthly
3 cost of various options. I don't know that you
4 relate them directly to the exemption. You know
5 what I am saying.

6 Q. First of all let me ask you do you
7 agree with Mr. Levine's assessment, that you have
8 done studies and they have shown a --

9 MR. LEVINE: No, the company did. All
10 I said is that is what the company said.

11 Q. Has your agency done any studies
12 concerning the increased cost or the savings to
13 the consumer as a result of Shoreham coming on
14 line at various times?

15 A. My agency participated in the
16 preparation of the Marburger report, which surely
17 looked at that.

18 Q. Do you recall what its conclusions were,
19 your agency's?

20 A. No, because I was not the head of the
21 agency at the time the staff report on that report
22 was being done.

23 MR. LEVINE: We had a person who is
24 responsible to assist the Marburger Commission
25 with the Public Service Commission representative

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2 and an energy office representative. They were
3 assisting. It wasn't necessarily a position that
4 we espoused.

5 A. We did a lot of the staff work.

6 Q. Has your agency taken any position in
7 the so-called prudency investigation by the Public
8 Service Commission concerning delay costs to the
9 consumer from Shoreham?

10 A. I would say yes.

11 Q. Does that position involve any
12 quantification of the amount of delay costs?

13 A. I would say yes.

14 Q. Can you tell me what the results of
15 that quantification are?

16 A. I don't remember the numbers
17 specifically, but we do quantify in the testimony
18 and exhibits the cost of the delay to rate payers
19 attributed to the various factors in the testimony.

20 Q. Do you know whether that is quantified
21 on a monthly or a yearly basis?

22 A. I don't remember.

23 Q. Was that testimony prepared under your
24 supervision and direction?

25 A. It was prepared under my supervision

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2 and direction, along with the supervision of the
3 other Commission members in that testimony who
4 prepared that, who that testimony represents.

5 Q. Who are those other Commission members?

6 A. The County of Suffolk and Long Island
7 Citizens in Action.

8 Q. Who was the witness who sponsored that
9 testimony?

10 A. There were a number of witnesses.

11 Q. Were you one of them?

12 A. No, I was not a witness in the prudency
13 investigation.

14 Q. Was anyone from your agency one of them?

15 A. No. I think all of the witnesses were
16 consultants that we had retained, the Commission
17 had retained.

18 Q. Did your staff participate in that
19 study at all?

20 A. Our staff surely did some work on the
21 study and our staff was in regular communication
22 with the consultants as well as with the other
23 parties.

24 Q. Did your agency endorse that testimony?

25 A. Yes.

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MR. LEVINE: In fact jointly sponsored.

Q. You understand it was jointly sponsored by your agency?

A. Yes, the testimony was sponsored by our agency, along with the other parties I mentioned to you.

Q. Forgive me if this is obvious, but have you ever worked in a nuclear power plant?

A. Not to my knowledge. No, I haven't. I haven't physically worked in a nuclear power plant. I surely have been in a nuclear power plant where I have conducted work. You understand what I am saying.

Q. You have never been employed by a utility to work in a nuclear power plant.

A. No.

Q. You told me earlier you were not an engineer. Do you have any engineering background? By that I mean engineering education.

A. No, sir.

MR. LEVINE: Formal educational background, rather than engineering that one must learn in the course of these processes.

MR. ROLFE: Right.

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Q. Did you understand my question to mean formal education?

A. Yes.

Q. Other than what is done in the state energy plan and any contribution you may have made to that plan through intervention, does your agency have any position as to whether Shoreham will decrease the oil dependence of Long Island in any beneficial way?

A. I don't know that my agency has taken a formal position outside of the State Energy Master Plan. I surely have a feeling about it, but I don't know that my agency has ever taken a position.

Q. I take it your feeling is that it is unnecessary for that purpose.

A. That is correct.

Q. Is it your opinion that Shoreham is not needed because the power that might be generated by Shoreham could be gotten from other sources?

A. That is one factor.

Q. What are the others?

A. You have to repeat the question.

Q. I think you said it was your personal

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opinion that Shoreham is not needed to decrease the oil dependence of Long Island.

A. Right.

Q. I asked whether it was your opinion that that was the case because sufficient energy could be obtained from other sources, and you said yes, that was one of the factors. The next question is what are the others?

A. I would say reliability and whether or not the plant as it is constructed would be a reliable provider of energy, is another factor. In my personal opinion it would not be.

Q. So in other words you don't think it will help alleviate the dependence on oil because you don't believe it will function reliably and provide the electricity that everyone expects?

A. That is a fact.

MR. LEVINE: Except for one comment, he said that everyone at LILCO expects.

Q. That the plant is ready for.

A. Right.

Q. Do you intend to express any opinions in your testimony other than those that we have already discussed this morning?

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2 A. At this point I don't think so. I
3 think the general opinions of what I have
4 expressed to you today are those that I would be
5 expressing in my testimony. Obviously between now
6 and then there may be refinement of those
7 positions, but in terms of general areas I think
8 we have covered at this point what I anticipate
9 testifying to.

10 Q. When you say refinements, do you mean
11 more specifics you might add in support of some of
12 these general views?

13 A. Yes.

14 (Continued on following page)

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MR. ROLFE: I will remind you of the Board's order, which I am sure your counsel is aware of, that discovery responses be limited and that includes deposition testimony, so as soon as you arrive at any such refinements, I would ask you to let Mr. Palomino know and ask Mr. Palomino to let me know.

I have no further questions.

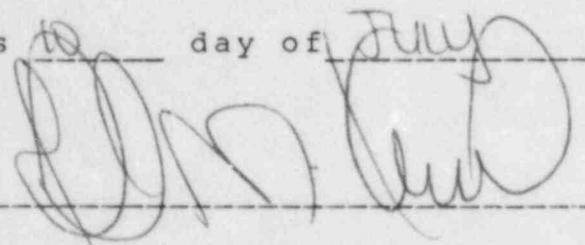
MR. PALOMINO: No questions.

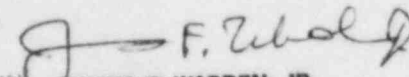
MR. LANPHER: No questions.

(Time noted: 12:55 p.m.)

Subscribed and sworn to before me

this 10 day of July 1984.




JAMES F. WARDEN, JR.
Notary Public, State of New York
Qualified in Albany County
My Commission Expires March 30, 1985
Reg. No. 4502563

