

ORIGINAL

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the matter of:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Generating
Plant, Unit 1)

Docket No. 50-322-OL-4
Low Power

Location: Hauppauge, New York Pages: 1350 - 1676

Date: Wednesday, August 1, 1984

TR 01
d/s

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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In the Matter of:	:
	:
LONG ISLAND LIGHTING COMPANY	:
	: Docket No.
(Shoreham Nuclear Generating	: 50-322-OL-4
Plant, Unit 1)	: (Low Power)
	:
-----	X

Court of Claims
State of New York
Courtroom No. 1
Veterans Memorial Highway
State Office Building
Hauppauge, New York 11787
Wednesday, August 1, 1984

The hearing in the above-entitled matter reconvened, pursuant to recess, at 9:01 AM

BEFORE:

MARSHALL E. MILLER, ESQ., Chairman
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

GLENN O. BRIGHT, Member
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

ELIZABETH JOHNSON, Member
Atomic Safety and Licensing Board
Nuclear Regulatory Commission
Washington, D. C. 20555

Sim 1-2

APPEARANCES:On Behalf of the Applicant:

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Washington, D. C. 20555

On Behalf of the Intervenor, State of New York:

FABIAN PALOMINO, ESQ.
Governor's Office
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* * * * *

SueT

C O N T E N T S

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>BOARD</u>	<u>VOIRDIRE</u>
Anthony Nozzolillo	1354	1356	1393	1396		
Brian R. McCaffrey	1416	1439/ 1542	1510/ 1652	1675		1422

L A Y - I N S

Testimony of Anthony Nozzolillo	1402 - 1410
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E X H I B I T S

	<u>Identified</u>	<u>Received</u>
Suffolk County LP-14	1369	1414
LILCO LP-5	1413	
LILCO LP-6	1417	
LILCO LP-7	1417	
LILCO LP-8	1417	
Suffolk County LP-15	1446	
Suffolk County LP-16	1473	1540
Suffolk County LP-17	1488	1540
LILCO LP-9	1513	1540
LILCO LP-10	1514	1540
Suffolk County LP-18	1525	1540
Suffolk County LP-19	1586	
Suffolk County LP-20	1599	
Suffolk County LP-21	1620	
Suffolk County LP-22	1629	

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#1-1-SueT

P R O C E E D I N G S

(9:01 a.m.)

JUDGE MILLER: Good morning, ladies and gentlemen. Are we ready to resume?

MR. ROLFE: Yes, Your Honor.

JUDGE MILLER: I thought we had a witness.

MR. ROLFE: We do, Your Honor. Mr. Nozzolillo was on the stand.

JUDGE MILLER: Very good. You may resume the stand, then.

You were sworn yesterday, were you not, sir?

WITNESS NOZZOLILLO: Yes, I was.

JUDGE MILLER: All right. You may proceed.

MR. ROLFE: Judge Miller, at the conclusion of the day, Mr. Nozzolillo was voir dired and he had been accepted as an expert on the areas described, and so to start this morning I would simply ask him to please summarize his testimony.

Whereupon,

ANTHONY NOZZOLILLO

resumed the stand as a witness by and on behalf of Long Island Lighting Company and, having been previously duly sworn, was further examined and testified as follows:

#1-2-SueT 1

DIRECT EXAMINATION

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INDEXXXXXXXXX

BY MR. ROLFE:

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Q All right.

4

A My testimony establishes economic benefits in terms of present worth of revenue requirements that would accrue to LILCO's customers if Shoreham were to operate three months earlier.

8

JUDGE MILLER: Were to commence operation three months earlier?

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WITNESS NOZZOLILLO: That is correct.

11

JUDGE MILLER: And what date do you use for that purpose?

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WITNESS NOZZOLILLO: For the purpose of this analysis, I utilize two dates. The earliest date, July 1, 1985, and a later date being October 1985.

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16

BY MR. ROLFE: (Continuing)

17

Q And, Mr. Nozzolillo, would you please summarize for the Board the conclusions that you reach in your testimony?

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A The conclusion that I have reached is that due to a three month earlier operation, it could be economic benefits in the order of eight to forty-five million dollars in terms of present worth revenue requirements.

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Q Just so the Board will understand, why did you

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#1-3-SueT 1

2 do your analysis in terms of present worth of revenue
3 requirements?

4 A I did them in present worth because when you are
5 analyzing expenditures that occur in different time frames,
6 in different years, the only way you can really compare
7 the expenditures is to bring them all back to a common
8 period or a common point.

9 Q And what is the significance of focusing on
10 revenue requirements?

11 MS. LETSCHE: Judge Miller, excuse me. I
12 object. We have prefiled direct testimony by this witness
13 which has already been proffered by Mr. Rolfe.

14 Normally there is a question asked for the witness
15 to summarize his testimony. But I do object to the addi-
16 tional direct questioning and responses by this witness in
17 addition to the prefiled testimony that's already in.

18 MR. ROLFE: Judge --

19 JUDGE MILLER: Overruled.

20 BY MR. ROLFE: (Continuing)

21 Q Could you answer the question please, sir?

22 A Could you repeat the question for me, please?

23 Q Yes. Why did you focus on revenue requirements?

24 A Under normal circumstances, revenue requirements
25 are what the customers actually pay.

MR. ROLFE: Mr. Nozzolillo is now ready for

#1-4-SueT 1

cross-examination.

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JUDGE MILLER: Very well. Cross-examination,

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County.

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MR. SEDKY: Yes, Your Honor.

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MR. PALOMINO: May I, Your Honor. I would like

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to object to this testimony on the same grounds we objected

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to the testimony of Mr. Iannuzzi yesterday, that any

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benefits that would be obtained by the consumers of Con Ed --

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or LILCO's utility are based upon full power operation and

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not upon benefits to be derived from advanced low power

11

operation, and that any benefits are contingent upon full

12

power operation.

13

JUDGE MILLER: We will overrule it, because we --

14

MR. PALOMINO: Fine.

15

JUDGE MILLER: -- believe that there has been

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testimony, and whatever weight there is, a connection

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between earlier full power if they do some things in the

18

interval. We haven't attempted to evaluate that, but --

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MR. PALOMINO: I just wanted to make my objection

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for the record.

21

JUDGE MILLER: The record will be protected. Okay.

22

Go ahead.

INDEXXXX 23

CROSS EXAMINATION

24

BY MR. SEDKY:

25

Q Mr. Nozzolillo --

#1-5-SueT

1 A Good morning.

2 Q Good morning. How are you today?

3 A Fine, thank you.

4 JUDGE MILLER: I like these little pleasantries.

5 Half an hour later we will review that.

6 (Laughter.)

7 BY MR. SEDKY: (Continuing)

8 Q Just so that we are all working from the same
9 basis of knowledge, the present value analysis basically
10 is what discounts a future stream of revenue to a present
11 date; isn't that correct?

12 A Yes.

13 Q Given certain assumptions concerning interest
14 rates; isn't that right?

15 A Yes.

16 JUDGE MILLER: Is this the present worth of
17 future dollars?

18 MR. SEDKY: That's correct, Your Honor. I just
19 want to make sure that we are all operating under the
20 same --

21 JUDGE MILLER: I wanted to be sure I was on
22 the same wavelength, too. Okay. Fine.

23 BY MR. SEDKY: (Continuing)

24 Q Now, in fact, your analysis looked at two
25 different scenarios, July 1, '85 versus October 1, '85, but

#1-6-SueT 1

then the July 1, '85 you looked at two different alternatives within that set, did you not?

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A Yes.

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Q You looked at an alternative that assumed what you characterize as synchronization for federal income tax purposes as of December 31, 1984 and synchronization for federal income tax purposes at a point beyond December 31, 1984; isn't that correct?

9

A That is correct.

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11

12

Q So you, in fact, looked at three different streams of revenue requirements in your analysis; isn't that correct?

13

A Yes.

14

15

Q Now, the July and October dates are for commercial operation; isn't that right?

16

A That is correct.

17

18

Q And that's different from synchronization dates; isn't that right?

19

A Yes.

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Q Now, synchronization is a term meaning being in-service just for federal income tax purposes; isn't that right?

23

A That's correct.

24

25

Q And your understanding of synchronization is that in effect Shoreham would be producing energy in excess of

#1-7-SueT1

that that it is drawing from the grid; isn't that right?

2

JUDGE MILLER: That it's drawing from the grid?

3

BY MR. SEDKY: (Continuing)

4

Q In other words, it takes a certain amount of energy to run Shoreham and that synchronization means that for federal income tax purposes, means that it's making some net output to the grid; isn't that right?

7

8

A That is correct.

9

Q Now, even as a layman you understand that in order for Shoreham to operate the generators would have to be connected; isn't that right?

11

12

A Yes.

13

Q The range of eight million to forty-five million, that includes, does it not, approximately thirty-seven million attributable to the synchronization for federal income tax purposes as of December 31, 1984?

16

17

A I'm not clear on the question, counselor.

18

Q All right. Perhaps it would be easier to approach it a different way.

19

20

What accounts for the range in your analysis between eight million and forty-five million as set forth in your testimony?

22

23

A The upper range of forty-five million dollars is caused by the fact that if Shoreham were to be synchronized for federal income tax purposes in 1984, you

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#1-8-SueT 1

would have a tremendous tax savings. So the upper range
2 is due to earlier in synchronization, which is 1984. So,
3 it's really the federal income taxes.

4 Q And the lower range which is the eight million
5 dollars is if there is no synchronization by December 31,
6 1984; isn't that correct?

7 A The lower range is predicated on the unit
8 being synchronized for tax purposes in 1985.

9 Q That's just another way of saying some time
10 after December 31, 1984, right?

11 A That's correct.

12 end #12
13 Joe flws

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1 Q The thirty-seven million dollar difference,
2 by that I mean the difference between forty-five million
3 and eight million, is a one shot benefit. You either get
4 it because you synchronize on December 31, 1984, or you
5 don't get it at all, isn't that correct? Under your
6 analysis?

7 A Counselor, I never really identified the
8 difference and attributed it to taxes. I took three
9 streams of revenues, and I compared the three streams. If
10 you are saying that the difference between the forty-five
11 and the eight is thirty-seven, that is fine, but I did not
12 do that.

13 I looked at three different streams of revenues
14 and compared them.

15 Q But -- you would agree with me, would you not,
16 that if you do not synchronize for Federal Income Tax purposes
17 by December 31, 1984, the benefit that you identify in your
18 testimony, given all the assumptions you make, is only eight
19 million dollars.

20 A That is right. It is closer to eight, yes.

21 JUDGE MILLER: I think there was a further question
22 whether that is a one shot operation, like advancing the day
23 people pay taxes. You do it once, and it is over, because
24 you got a new date. Now, the question is the synchronization
25 for Federal revenue purposes, if it occurs prior to December
 31, 1984, it has certain fiscal consequences, right?

1 WITNESS NOZZOLILLO: Yes.

2 JUDGE MILLER: What if it doesn't happen then.
3 Is it over with as far as that item is concerned in the
4 future or not?

5 WITNESS NOZZOLILLO: It is a lower number. Then
6 that benefit is towards the value of eight, rather than
7 the forty-five.

8 BY MR. SEDKY: (Continuing)

9 Q Just to make that clear, if it synchronizes not
10 on December 31, '84, but on January 1, 1985, your analysis
11 indicates that the net benefit is eight million dollars,
12 isn't that right?

13 A That is correct, counselor.

14 JUDGE MILLER: Pardon me while I think of it.
15 Were there any so-called attachments, which I regard as
16 exhibits, to this testimony?

17 MR. ROLFE: Yes, Your Honor. There was a
18 thirteen page attachment which contained all the basic
19 assumptions which Mr. Nozzolillo used in his analysis.

20 JUDGE MILLER: I just saw that. Have you marked
21 that as an exhibit?

22 MR. ROLFE: No, Your Honor, we have not.

23 JUDGE MILLER: We better, if you want to get it
24 in the record.

25 MR. ROLFE: I had planned to when we offered the

1 testimony at the conclusion. I can do it now, if Your Honor
2 would prefer.

3 JUDGE MILLER: Well, it is cross examination.
4 If he is going to be cross examined, he should be cross
5 examined on the whole package. You ought to offer that.
6 You ought to mark it for identification, which would be
7 enough. Hold the offering until you offer all the
8 testimony.

9 MR. ROLFE: In that case, Your Honor, I would
10 offer the document entitled, Basic Premises and Assumptions,
11 which is Attachment 1 to Mr. Nozzolillo's prefiled testimony,
12 and to which Mr. Nozzolillo referred in his prefiled
13 testimony, which consists of thirteen pages, as LILCO
14 Exhibit LP-4.

15 JUDGE MILLER: You have a four. Or at least,
16 I have a four.

17 MR. ROLFE: All right. Five, I am sorry.

18 JUDGE MILLER: Let me ask counsel, where you
19 have attachments -- as I told you, I have only testimony
20 and I have the attachments in the other room, so in order
21 to avoid confusion, let me know any time there is an
22 attachment, so we can at least make a judgment as we go.

23 But I think ninety-nine percent of them will be
24 regarded and treated as exhibits.

25 MR. ROLFE: That is fine, Your Honor. We will

1 do that.

2 JUDGE MILLER: Fine. Thank you. You may
3 proceed.

4 BY MR. SEDKY: (Continuing)

5 Q Now, Mr. Nozzolillo, your analysis also shows,
6 does it not, that an earlier in service date; by that, I mean
7 July '85 versus October '85, would require a rather large
8 rate increase, would it not?

9 A If rates were based on conventional revenue
10 requirements, which was the basis of my analysis, that is
11 correct.

12 Q In fact, the difference is approximately a hundred
13 and sixty-five million dollars rate increase attributable
14 just to the three months earlier operation, isn't that right?

15 A Based on conventional ratemaking, that is correct.

16 Q And, that is -- assuming conventional ratemaking,
17 your analysis indicates that the 165 million dollars would be
18 the value of the rate increase just for that three month
19 earlier operation, isn't that right?

20 A On that assumption, that is correct.

21 Q And whether, and to the extent that that 165
22 million dollar revenue increase attributable to the three
23 month earlier operation is recovered downstream is a function
24 of what happens in the future, including fuel prices,
25 efficiency of operation, profitability of the company,

1 interest rates, and a lot of other assumptions, isn't that
2 right?

3 A Counselor, I had a little trouble with your
4 statement. I think you said whether or not the 165 is
5 recovered. I don't understand what you are saying.

6 Q That is just a lay person's way of looking
7 at it. From the point of view of the consumer, from the
8 consumers point of view, having incurred now in the aggregate
9 -- I mean the universe of consumers -- 165 million dollar
10 rate increase, before I see the trickle the effect of that
11 rate increase as having been made up by future savings in
12 the disparity of fuel costs and so forth, that could take
13 quite a while, isn't that right?

14 A Yes.

15 Q And in addition, whether I ever see those savings
16 would be a function of a lot of assumptions, including
17 the disparity in fuel prices between nuclear and fuel,
18 interest rates, efficiency of operation, profitability of
19 the Company and so forth, isn't that right?

20 A I cannot agree with that.

21 Q You cannot. Well, supposing that the Company's
22 cost of operation increased substantially greater than the
23 assumptions contained in your analysis, wouldn't that mean
24 there would be continued necessity for higher revenue
25 requirements than you have assumed in your analysis?

2-6-Wal

1 A I am having a little difficulty, counselor.
2 Perhaps let me try, if I can.

3 We are not evaluating whether or not Shoreham
4 operates or doesn't operate. The scenario I am addressing
5 is given that Shoreham operates, goes commercial, is there
6 an advantage to earlier commercial operation.

7 Once the three months have elapsed, Shoreham
8 is going to be there, and the resulting -- in case it goes
9 in later, it goes in at a higher cost, so that the extent
10 from that point on, the cost will always be higher in the
11 case where Shoreham came in at a later date, regardless
12 of what the fuels are, because they come into both sides
13 of the equation, if you will.

14 Q My only point is that we know that -- assuming
15 conventional rate treatment -- there is going to be a 165
16 million dollar increase attributable to the three months
17 earlier versus later startup, isn't that right?

18 A That is correct, for 1985.

19 Q For 1985.

20 A Correct.

21 Q Now, to the extent that -- I will withdraw the
22 question. Let me approach it in a different fashion.

23 Let me have marked as Suffolk County LP Exhibit
24 14 for identification, a three page -- four page document,
25 the first page of which is a handwritten table, entitled

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cumulative present worth of revenue requirements.

I represent for the record that this is a document produced by LILCO in connection with Mr. Nozzolillo's deposition on -- the deposition was on June 28, 1984.

MR. ROLFE: Your Honor, just for clarification in the record, these documents were not produced as a part of the deposition. They were produced pursuant to document request which had previously been filed.

In other words, they weren't pursuant to any questioning in the deposition, but they were documents that were produced by LILCO.

End 2.
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Sim 3-1

1 JUDGE MILLER: Were they produced at or in connec-
2 tion with a deposition notice or agreement?

3 MR. ROLFE: They were produced at the deposition,
4 but not in accordance with an agreement that that would
5 be produced at that time. In other words, they had been
6 requested previously and the timing of their production just
7 happened to coincide with the deposition.

8 JUDGE MILLER: Okay. The record will so reflect.

9 (The document referred to was
10 marked Suffolk County Exhibit
11 LP-14 for identification.)

12 BY MR. SEDKY:

13 Q Mr. Nozzolillo, are you able to identify what
14 has been marked as Suffolk County Exhibit LP-14 for
15 identification?

16 A Yes.

17 Q Is the first page of that exhibit in your
18 handwriting?

19 A No.

20 Q Do you know who prepared that exhibit?

21 A Yes.

22 Q Who did?

23 A A gentleman that works for me.

24 Q All right. It was prepared under your supervision
25 and control?

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Sim 3-2

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A That is correct.

2

Q All right. How about the other pages, do you know what those are?

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4

A The other pages are output from a PC.

5

Q I am sorry, from a what?

6

A From a PC, a personal computer.

7

Q All right. Was that a LILCO PC or not?

8

A IBM.

9

(Laughter.)

10

JUDGE MILLER: Give credit where due.

11

(Laughter.)

12

BY MR. SEDKY:

13

Q A point to you, Mr. Nozzolillo.

14

But I mean it belonged to LILCO?

15

A Yes.

16

Q Would you briefly describe the table that is set forth on the first page of Suffolk County Exhibit LP-14 for identification?

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A I believe that the first page shows the cumulative present worth of revenue requirements. That is the summation of the present worth of the discounted amount of each year annual revenues summed up.

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Q When you looked at the present value, for example, for the year 1984, were you looking at a horizon of the year 2000, or were you looking at the entire life of the

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Sim 3-3

1 life of the plant?

2 A My study period was limited to the year 2000.

3 Q All right. Just so that the record is clear
4 and we are all operating from the same basis of information,
5 if you look at C.O. 7/1/85, SYNC 1/85, I gather that means
6 commercial operation 7/1/85 and synchronization for tax
7 purposes 1/85; isn't that correct?

8 A That is correct.

9 Q Right. And that number, 1473, that is in
10 thousands of dollars, is it not, or millions of dollars?

11 A Millions.

12 Q Millions of dollars. So what you are saying
13 in that first line, I gather, is that the present worth
14 of revenue requirements in 1984, assuming commercial opera-
15 tion July 1, '85 and synchronization for federal income
16 tax purposes January 1, '85 is roughly \$1.5 billion, right?

17 A That is correct.

18 Q And so on down the table?

19 A Yes.

20 Q Now if you look at just the columns that compare
21 commercial operation 7/85 with synchronization January '85
22 and the column that refers to commercial operation in
23 October 1, '85 and synchronization March '85, the difference
24 on a cumulative basis at the year 2000 is \$8 million, right?

25 A Yes.

Sim 3-4

1 Q And that is the same \$8 million that you are
2 referring to in your testimony; isn't that right?

3 A It is the same eight. However, it was based
4 on a different run than this.

5 Q I understand. You made a different run that
6 adjusted for interest rates and so forth, but in substance
7 you ended up with the same conceptual result, didn't you?

8 A Yes. The results are in the same order of
9 magnitude.

10 Q In the same order of magnitude?

11 A That is correct.

12 Q So for purposes of analysis, it wouldn't be
13 unfair to refer to this \$8 million as being the same
14 \$8 million that you are referring to in our testimony, would
15 it?

16 A Eight million is eight million.

17 Q Okay. Now on a cumulative basis then if you
18 look at the second and third columns of the table, isn't
19 it fair to say that on a cumulative basis the benefits
20 to the consumer don't begin to show up until the year 1998?

21 A It looks more like '97 to me, counselor, but
22 it is in that time frame.

23 Q Okay. And that is because it is going to take
24 some time to in effect eat up that \$165 million hit that
25 we talked about earlier; isn't that right?

Sim 3-5 1

A In terms of present worth, you are correct.

2

Q Now let's look at the question of the synchronization as of December 31, 1984. How realistic do you think that is?

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A The only thing I could give you, counselor, is my opinion. I am not an expert on that subject.

5

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Q Right.

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A Based on my understanding, I have been informed that it could be achievable. That is not to say that it will be achievable. My understanding is that it could be achievable. What are the chances of being achievable, I do not know.

9

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Q We have already established I think that the generators would have to be connected in order for there to be any power at all out of Shoreham; isn't that right?

13

14

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A Yes.

16

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Q And you understand, do you not, that LILCO witnesses have testified that during the entire phase of low-power testing that the generators will not be connected?

18

19

A I will be honest with you, this is information that I have heard from you now and I think I have heard it before. If that is the case, that is the case. I don't have a personal knowledge of that.

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Q Right. Well, on that assumption, Mr. Nozzolillo, and I don't think it is in dispute, let me ask you a

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3-6 Sim

1 follow-up question. Are you aware now of the scheduling
2 that this Board has set for litigating the security issues
3 in this proceeding?

4 A No, I am not.

5 Q Well, by my computation, the pretrial conference
6 would be August 30 and there would be 85 days before there
7 would be submission of proposed findings. I would count
8 that to be about November 30 as the earliest date by which
9 this Board might be ready to make a partial initial decision
10 on the exemption. That would give a month, assuming the
11 utility got the exemption that day, and it still has to
12 go up to the Commission, but given those facts, do you have
13 a view as to whether or not the plant is likely to be
14 synchronized by December 31, 1984?

15 MR. ROLFE: Objection, Your Honor. I think
16 the question is a hypothetical which includes facts which
17 are not accurate and therefore the hypothetical is
18 irrelevant.

19 There is no assumption that there will be any
20 security contentions indeed admitted. We are simply
21 speculating on that, and this witness' answer to that
22 kind of speculation would be meaningless.

23 MR. SEDKY: The fact is that in order to attain
24 the \$45 million of benefit as opposed to the \$8 million of
25 benefit, there would have to be a net plus to the grid

Sim 3-7

1 out of Shoreham by December 31, 1984; isn't that right?

2 THE WITNESS: Based on conventional revenue
3 requirements, you are correct, counselor.

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Q Now, whether or not it's synchronized that has nothing to do with revenue requirements, does it? That's a fact; it's either synchronized or it's not synchronized.

A 1984?

Q Right.

A That's correct.

Q Okay. Now, the computer models that you used in arriving at the benefits you identified in your testimony, they made certain assumptions, did they not, they -- let me put it this way.

The computer models included hypothetical balance sheets, income statements and source and application of funds, did they not?

A I have a little trouble with the word hypothetical.

Q Well, they are models.

A I'm sorry?

Q They are models, are they not? I mean, they are based on models?

A Yes, they are models. And the output that it has produced is a function of the input.

Q That's correct. Well, they are hypothetical to the extent, for example, that for 1985 the model assumes short term -- for 1984, the model assumes short term debt borrowing of three hundred seventy-eight million dollars, does it not?

#4-2-SueT

1 A I repeat, the model assumes conventional rate-
2 making. If we had conventional ratemaking that would be
3 the number.

4 Q Well --

5 A You are saying, is that the real world today?

6 Q All I'm trying to establish is that it's not
7 the real world today.

8 A Yes, that's true.

9 Q All right. To your knowledge, is LILCO able to
10 borrow three hundred and seventy-eight million dollars
11 today?

12 A I don't know.

13 Q The model also assumes, does it not, that common
14 stock dividends will be paid in '84, '85, '86, all the way
15 through the year 2000; isn't that correct?

16 A That's not correct.

17 Q The model does not make that assumption?

18 A It makes that assumption from '85 on, not for
19 1984.

20 Q Well, I have an entry here that says fifty-four
21 point one million dollars from your sheets. Is that just
22 some --

23 A I'm sorry, counselor. You are correct, for the
24 first quarter of '84 only. That's for the first quarter
25 of '84. Those were the dividends that were paid.

#4-3-SueT

1 Q All right. But your model assumes dividends will
2 be -- would be commenced being paid in January of '85;
3 isn't that right?

4 A That's correct.

5 Q And given LILCO's present financial condition,
6 what are the prospects of LILCO resuming the payment of
7 dividends in 1985? January of '85?

8 A I don't know.

9 Q You have no view on it?

10 A My personal view is that that would depend on
11 the resolution of some of the major issues they are in
12 today, which is Shoreham.

13 Q Which is Shoreham? It also would be impacted
14 by the ability of the Company to raise money; isn't that
15 correct, in the outside markets?

16 A That's correct.

17 Q Now, you are aware, are you not, that all of the
18 rating services have decreased very substantially their
19 rating of the Company's securities?

20 A Painfully aware, sir.

21 Q And you are aware, are you not, that the Company
22 has stated publicly that it has no access to external funds
23 at this time?

24 JUDGE MILLER: In what form did that representation
25 occur?

#4-4-SueT 1

MR. SEDKY: I believe it was stated by Mr. --
2 we've got it, I think it was the white paper that was
3 filed with Governor Cuomo, Your Honor.

4 BY MR. SEDKY: (Continuing)

5 Q Are you aware of that?

6 A I don't think it was stated here, counselor.
7 But it was stated during the rate case proceedings.

8 Q All right. But it was stated, to your knowledge?

9 A It was stated. I was there when it was stated.

10 Q You are aware, are you not, that there is a
11 ninety million dollar bond payment due September 1, 1984?

12 A Yes, I'm aware of that.

13 Q And you are aware that the Company will not
14 have the cash to pay for that unless it obtains some
15 external financing?

16 A I have seen Mr. Sederis' exhibits, and that's
17 what it indicates, that there is a cash shortfall.

18 Q As of September 1, 1984, correct?

19 A Yes, that's correct.

20 Q In other words, based on present conditions the
21 Company will not be able to make that bond payment September
22 1, 1984; isn't that correct?

23 A I'm really not aware of the present conditions.
24 I'm aware that the Company is involved in negotiations with
25 certain banks and other agencies to try to reach -- to try

#4-5-SueT 1

2 to raise the money required. Whether they have reached a
3 settlement, whether they have gotten the money, I am not
4 aware of that. So, I really don't know for sure what the
5 current circumstances are.

6 Meaning, do we have the money in hand or don't
7 we have the money.

8 Q Okay. But if present circumstances, if you
9 will permit me to take my definition, which is that you
10 don't have the money in hand. Until you get some additional
11 money, you will not be able to make that ninety million
12 dollar payment will you?

13 MR. ROLFE: Your Honor, I object to the relevance
14 of this line of questioning. We have let it go a little
15 ways to establish -- Mr. Nozzolillo has admitted that there
16 are certain uncertainties concerning the Company's finances,
17 which may or may not impact upon his analysis.

18 I think what we are getting into now is an
19 interrogation concerning the Company's financial condition
20 which borders on the -- not borders on, gets directly into
21 the financial qualifications issue, which the Board has
22 already ruled is not relevant and material in this proceed-
23 ing.

24 And I don't think the questions have any other
25 relevance or materiality.

JUDGE MILLER: Well, financial qualification, we

#4-6-SueT

2 have ruled we are not going to go into that subject for
3 the reasons stated. However, you do have some expert
4 opinion testimony being given here as to financial and
5 economic consequences of certain things. Those are based
6 upon a whole series of assumptions that the witness has
7 described. So, we can't just bind ourselves to what those
8 assumptions are.

9 We don't intend to get into a long, drawn out
10 audit of the Company's assets and financial position, but
11 I think so far that it's relevant to the opinions and
12 the extrapolations that were made by an expert witness.

13 So, you may answer. Is there a pending question?

14 MR. SEDKY: I better have it read back. I'm
15 sorry, Your Honor.

16 JUDGE MILLER: You had better rephrase it. It
17 would be a lot easier.

18 BY MR. SEDKY: (Continuing)

19 Q I think the question was, Mr. Nozzolillo, and I
20 just don't know if you answered it, without any additional
21 external financing, isn't it a fact that the Company would
22 be unable to meet that September 1, 1984 bond payment that
23 is due?

24 A That's correct.

25 Q You are also aware, are you not, that the Company
has already instituted an austerity program that is designed

#4-7-SueT 1

to save a hundred million dollars a year?

2

A A hundred million in cash flow?

3

Q I believe so.

4

A Yes, that is true.

5

Q And are you aware that the Company has stated

6

in its white paper that further austerity wouldn't help

7

make the Company viable?

8

A I don't know if that's stated. I'm not that

9

familiar with the white paper.

10

Q Have you reviewed it?

11

A I've read it.

12

JUDGE MILLER: We keep having references to a

13

white paper. I suppose at some point somebody is going

14

to pick up that white paper and put a number on it, aren't

15

they, for identification?

16

MR. SEDKY: We will do it in our case, Your

17

Honor.

18

JUDGE MILLER: All right.

19

BY MR. SEDKY: (Continuing)

20

Q Are you aware that the Company's austerity pro-

21

gram has already resulted in cuts in services to the

22

customers?

23

MR. ROLFE: Objection, Your Honor. I don't see

24

that that has any relevance.

25

JUDGE MILLER: I think you are getting a little

#4-8-SueT¹

2 farther afield than necessary as far as this witness'
3 testimony.

4 The objection is sustained.

5 BY MR. SEDKY: (Continuing)

6 Q You are aware, are you not, also, Mr. Nozzolillo,
7 that on the financial side that the Company's lenders have
8 put the Company on a sort of thirty-day review with respect
9 to defaults on payments for fuel supplies?

10 MR. ROLFE: Your Honor, I have the same objection.
11 May I have a continuing objection to this line of questioning.

12 JUDGE MILLER: Well, I'm going to sustain that,
13 so you had better have an intermittent series of objections.

14 MR. ROLFE: Then, I do object on the grounds
15 of relevancy.

16 MR. SEDKY: Your Honor, this goes to the same
17 issue that we have been inquiring as to before. He makes
18 certain assumptions as to the ability to raise money, the
19 ability to pay common stock dividends.

20 JUDGE MILLER: We have let you interrogate on
21 those.

22 MR. SEDKY: Well, but that goes to the same
23 point. If the banks --

24 JUDGE MILLER: That's cumulative.

25 MR. SEDKY: Your Honor, if I could just finish
my point --

#4-9-SueT

1 JUDGE MILLER: Sure.

2 MR. SEDKY: -- you can sustain the objection, but
3 I would like the record clear.

4 It goes to the point that if the banks call in the
5 loans that are outstanding that that would directly impact
6 these forecasts or the assumptions underlying the evidence
7 that is in this record.

8 JUDGE MILLER: As I already indicated, there
9 are a number of questions involving his assumptions. I
10 think there are a number of questions that the witness has
11 conceded to make the situation clear.

12 Now, I understood in your own case you were
13 going to go into some of these matters or attempt to. I'm
14 not trying to prejudge --

15 MR. SEDKY: We are trying to make as complete a
16 record as we can. If the Board is satisfied that we have
17 raised the issue to its satisfaction, you know, we will
18 move on to something else.

19 JUDGE MILLER: I'm not saying who has satisfied
20 what. I'm simply saying that you have been permitted to
21 make I think a pretty clear record on the quality of the
22 assumptions which have gone into the conclusions which the
23 witness has drawn, and that he has conceded freely are
24 there.

25 If you have got anything that you haven't covered,

#4-10-SuaT

we -- but I think this is cumulative.

2 MR. SEDKY: This is something we have not
3 covered, which is the status with the banks that we --

4 JUDGE MILLER: You have covered a lot of threats
5 and what is going to happen, ifs and so forth. I don't
6 think that you have pinned any financial roses on them.

7 MR. SEDKY: Well, I take that the objection is
8 sustained; is that correct?

9 JUDGE MILLER: Yes.

10 BY MR. SEDKY: (Continuing)

11 Q You understand, do you not, Mr. Nozzolillo,
12 that the Company has ceased making payments on the Nine
13 Mile Point construction?

14 A It has ceased making direct construction payments
15 on Nine Mile; that is correct.

16 Q And it has been notified by other co-tenants
17 in that project that they consider the Company to be in
18 default in its obligations?

19 MR. ROLFE: Objection, Your Honor.

20 JUDGE MILLER: Overruled. You may answer.

21 MR. ROLFE: For the record, Your Honor, the
22 grounds of that objection is that it's irrelevant.

23 WITNESS NOZZOLILLO: I think I have read that
24 in the 10-K.

25 JUDGE MILLER: You've read it where?

#4-11-SueT¹

WITNESS NOZZOLILLO: In the Form 10-K.

2

JUDGE MILLER: Okay.

3

BY MR. SEDKY: (Continuing)

4

Q That's a Form 10-K, just so the record is clear, filed by the Company for calendar year ending December 31, 1983 as filed with the SEC?

5

6

A That's correct.

7

8

MR. SEDKY: Your Honor, may I have just a moment to confer?

9

JUDGE MILLER: Yes.

10

(Counsel for the Intervenor, Suffolk County, are conferring.)

11

12

BY MR. SEDKY: (Continuing)

13

14

Q Mr. Nozzolillo, your analysis assumed, did it not, that starting low power testing three months earlier would be linked day per day with starting full power operation three months earlier; isn't that correct?

15

16

A I don't know if it assumed that. I just assumed two different commercial dates.

17

18

Q All right. You were just looking at starting commercial operation three months earlier than otherwise, right?

19

20

A That is correct.

21

22

Q Now, you did not give any consideration whatsoever, did you, to the benefits to anybody, or the detriments to

23

24

25

#4-12-SueT

1 anybody, flowing from -- going to low power testing and then
2 not getting a commercial license; isn't that correct?

3 MR. ROLFE: Objection, Your Honor.

4 JUDGE MILLER: Sustained. The Commission has
5 ruled on that.

6 MR. SEDKY: Your Honor, the only question is to
7 make clear that his testimony did not address it. I'm not
8 trying to get into that issue necessarily, just for the
9 record that his testimony didn't address that issue.

10 JUDGE MILLER: Well, it couldn't and shouldn't
11 address that issue, because the Commission has made
12 certain rulings.

13 MR. SEDKY: Well, if I could only get it out of
14 the witness' mouth for the record that, in fact, it didn't
15 address it, I'm really not trying to open the door there.

16 JUDGE MILLER: You had better not even nudge it.
17 The objection is sustained.

18 MR. SEDKY: Very well. I have no further
19 questions of this witness.

20 JUDGE MILLER: The State.

21 CROSS EXAMINATION

22 BY MR. PALOMINO:

23 Q Mr. Nozzolillo, your assumptions are predicated
24 on the rates being based on the full cost of this plant,
25 aren't they?

#4-13-SudT

A That's correct.

2 Q At the present time, there is a prudency hearing
3 application pending before the New York Public Service
4 Commission, isn't there?

5 A That is my understanding.

6 Q Now, what is the purpose of that prudency hearing?

7 A I'm not too clear on it. My understanding, it is
8 to address the fact whether or not there were certain ex-
9 penditures that the Company incurred at Shoreham, whether
10 or not certain of those expenditures were prudently incurred.

11 Q The cost of construction. And if they were not
12 prudently incurred, then they can't be charged to the rate-
13 payers; is that correct?

14 A I don't know that. Based on my understanding of
15 ratemaking, and ratemaking really addresses expenditures
16 that are prudently incurred, that would be correct.

17 Q And isn't it a fact that the staff of the Public
18 Service Commission has recommended a certain amount that
19 should be allowed for the rate base and everything else
20 above that should be deemed imprudent and attributed to
21 LILCO's mismanagement in the construction of this plant?

22 A That's what I've read in the papers.

23 JUDGE MILLER: What papers?

24 WITNESS NOZZOLILLO: I think it was in Newsday
25 or The New York Times also.

#4-14-SueP

1 JUDGE MILLER: Is that the sole basis of your
2 knowledge?

3 WITNESS NOZZOLILLO: Regarding the prudence,
4 that's correct, Your Honor.

5 JUDGE MILLER: That's not an adequate basis.

6 BY MR. PALOMINO: (Continuing)

7 Q And they've never discussed it in the firm and
8 you've never heard anybody mention it?

9 A I've heard it in the Company. I personally have
10 read it in the papers. I have not seen those documents,
11 that's my point. I haven't seen any papers that --

12 Q You don't doubt the accuracy of that?

13 A Oh, no, I don't doubt that.

14 Q And that would be approximately half the cost
15 of the plant at this time, right?

16 Two billion one or so?

17 A I really don't know what the figure is, counselor.

18 Q Well, let me say this. In any event, if they
19 came down with half the cost that would reduce your eight
20 million dollar benefit to four million, wouldn't it?

21 A I have a problem with that. I have a problem
22 understanding the question, counselor.

23 Q Well, your rates are predicated on a four billion
24 some plus cost of the plant. If they could only attribute
25 two billion plus to the ratepayers, would that reduce the

#4-15-SueT 1

2 amount of benefit? You have given a certain benefit, from
3 eight to forty-five million based on four billion.

3

4 What would it be if it was on two billion? That's
5 the question.

5

6 A The answer to the question is that it would re-
7 duce revenue requirements for both scenarios, either a
8 July in-service date or an October in-service date. But
9 I still feel that the benefit itself -- in other words,
10 both sides would be reduced.

10

11 The revenue requirements would go down from the
12 customer's point of view. But I think the benefit would
13 still be in the same order of magnitude.

13

14 Q Well, if there is a cap on the rate base, won't
15 the benefit be the same regardless of whether it starts
16 earlier or later?

16

17 A I have done that analysis, counselor, wherein
18 I assumed a cap on revenues. What I've really looked at
19 is what we classify as rate moderation plan which says that
20 when Shoreham goes commercial we are going to phase it into
21 rates over a certain period of time.

21

22 And I have found that the benefit in that case
23 goes to forty-five million dollars.

23

24 Q Mr. Nozzolillo, do you know the cost of the fuel
25 that will be used during a three month testing period if
they were to be given a low power license?

&4-16-SueT

1 A Are you asking me what is the value of the fuel
2 that is displaced?

3 Q Yes.

4 A It's the order of about fifty million dollars,
5 roughly sixteen point seven million per month.

6 MR. PALOMINO: I have no further questions.

7 JUDGE MILLER: Staff.

8 MR. PERLIS: Just a few questions.

9 CROSS EXAMINATION

10 BY MR. PERLIS:

11 Q I understand that your testimony was based on an
12 assumption, or two scenarios, one where commercial operation
13 took place -- would take place on July 1st, one where it
14 would take place October 1st.

15 I'm wondering, if you keep the three month dif-
16 ferential but you changed those dates, if you are dealing
17 now with August 1st and November 1st, and again leaving aside
18 any taxation benefits, would the eight million differential
19 be the same or would it change?

20 A I frankly feel that it would be about the same.
21 I have not done that analysis. I feel that that three
22 month spread, whether it's August and November, I think it's
23 still in the order of about eight million dollars.

24 Q Okay. Would it be likely to change with the dates
25 of service, again leaving aside taxation benefits, not just

#4-17-Sue

a one month change now but a greater one?

2

A I don't know to what extent, counselor. I feel

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it's going to be in the same order of magnitude.

end #4

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1 Q The second question is, Mr. Sedky questioned
2 you about a number of assumptions that you relied upon, and
3 whether there are questions dealing with those assumptions.

4 How did those assumptions impact the eight million
5 dollar differential?

6 In other words, if LILCO did have trouble raising
7 money, would that affect the eight million dollar differential
8 between operation, say, August 1st and operation November 1st?

9 A I don't believe that they would.

10 MR. PERLIS: Okay. I have no further questions.

11 JUDGE MILLER: Any redirect?

12 MR. ROLFE: Yes, Your Honor.

REDIRECT EXAMINATION

14 BY MR. ROLFE:

15 Q Mr. Sedky (sic), in response to one of Mr.
16 Palomino's questions, you referred to a sixteen --

17 JUDGE MILLER: You are interrogating the wrong
18 gentleman.

19 MR. ROLFE: I am sorry.

20 BY MR. ROLFE: (Continuing)

21 Q Mr. Nozzolillo, in response to one of Mr.
22 Palomino's questions, you referred to a fifty million dollar
23 saving in fuel, or sixteen point seven million dollars per
24 month over the three month spread that you looked at. Can
25 you explain from what that savings derives?

1 A Yes. That is the cost of the oil that Shoreham
2 displaces.

3 Q Now, Mr. Sedky, you were also questioned about
4 your knowledge of the PSE --

5 JUDGE MILLER: You did it again.

6 MR. ROLFE: I am sorry. Mr. Nozzolillo. I
7 apologize.

8 BY MR. ROLFE: (Continuing)

9 Q Now --

10 A I don't think he likes me.

11 JUDGE MILLER: I am not going to draw any
12 inferences.

13 BY MR. ROLFE: (Continuing)

14 Q Mr. Nozzolillo, you also were asked about your
15 knowledge of the Prudency proceeding pending in front of the
16 Public Service Commission of the State of New York.

17 Do you know whether the Public Service Commission
18 has rendered any decision in that case?

19 A I don't know.

20 Q Has the PSC's staff recommendation concerning
21 disallowance of the cost, or a portion of the cost of Shoreham
22 in the rate base been accepted by that Commission?

23 A I don't know, counselor.

24 Q Now, Mr. Nozzolillo, you were questioned by Mr.
25 Sedky concerning certain of the assumptions that you made in

1 arriving at your analysis, and you were asked whether those
2 assumptions would be -- how they would be affected by
3 LILCO's inability to get financing and you were questioned
4 about certain problems LILCO faced.

5 Do you have any opinion as to whether the granting
6 of this exemption would affect the uncertainties concerning
7 LILCO's financial future?

8 Q I tried to state it before. Obviously, the
9 sooner the financial market gets a signal that the Shoreham
10 issue has been resolved, the sooner the Company would gain
11 access to the capital markets, in my opinion. So it would
12 be a positive signal to the markets out there that the
13 Shoreham issue has been resolved.

14 So, the sooner we get it, the better it is
15 financially.

16 Q Well, can you relate that more specifically to
17 the request for exemption which is pending before this
18 Licensing Board in this proceeding? In other words, do you
19 think the granting of this exemption would send that kind
20 of signal?

21 A Yes. I would say if the three month figure is
22 correct, that would send them that kind of a signal.

23 MR. ROLFE: I have no further questions.

24 JUDGE MILLER: Anything further within the scope
25 of the redirect?

1 MR. SEDKY: Yes, Your Honor. Just a very few
2 questions.

3 RECROSS EXAMINATION

4 BY MR. SEDKY:

5 Q I am not sure I understood one of your answers,
6 Mr. Nozzolillo. With respect to if you assume a cap on what
7 the PSC would permit as a recovery in your rate base. Now,
8 isn't it a fact that if there is a cap, the timing of the
9 revenue requirements wouldn't make any difference.

10 Because the capital costs would be the same, and
11 the revenue requirements would be the same.

12 A I miss your point, counselor. I am saying raising
13 the cap on the revenue requirements does not affect the
14 capital cost of the plant. The capital cost of the plant
15 --

16 Q That is not my question. I am talking about
17 put a cap on the rate base. If you put a cap on the rate
18 base -- in other words, that we are only going to let you
19 recover two billion out of the four billion in Shoreham. I
20 wasn't clear on the questions that Mr. Palomino was asking
21 you. If it turns out that you can only recover two billion,
22 then your capital costs, the recoverable capital costs is
23 fixed, as I understand it as a layman, and it shouldn't make
24 any difference then. You are going to have the same revenue
25 requirements. The stream is going to be the same whether

5-5-Wal

1 you look at it in October or look at it in July, in terms
2 of present value.

3 A But the fuel savings would still be there. The
4 stream of revenue for depreciation of Federal Income Taxes
5 associated with the capital investment itself would be the
6 same if the capital costs was the same, but there would
7 still be that advancement, if you will, of the fuel
8 savings.

9 Q All right. There would be, in effect, a lower
10 revenue requirement, isn't that correct, if there was a
11 cap on the capital costs?

12 A There would be a lower revenue requirement if
13 there was a cap, but somebody has to make up the differential
14 in costs, obviously.

15 Q Now, I think in response to a question from the
16 NRC Staff, you were talking about some fuel savings. I
17 just want to make a point clear in my mind. When we talked
18 earlier about the difference in revenue requirements for
19 1985, under your analysis, analysis that compares October
20 with July 1985, we talked about 165 million dollar differential,
21 correct?

22 A That is revenues.

23 Q That is correct.

24 A I think you were saying fuel.

25 Q I just want to make clear in my own mind. Now,

1 that 165 million differential is already -- accounts for any
2 fuel savings, does it not?

3 A For the year 1985?

4 Q Right.

5 A On conventional revenues, in that year, that
6 accounts for that, yes. That is included in that figure.

7 Q So, the fifty million in fuel savings that you
8 were referring to is not an additional benefit in 1985, is
9 it?

10 A No, it is captured in that number that you
11 just said, in that delta.

12 Q In that delta, meaning the difference, right?

13 A Yes.

14 Q All right. Now, you also talked about the signal
15 to the capital markets in the event of the resolution of the
16 Shoreham issue.

17 Now, I assume by that you mean that it would be
18 a positive signal only if it would result favorably to LILCO,
19 isn't that correct?

20 A Yes, that is correct.

21 MR. SEDKY: I have nothing further.

22 JUDGE MILLER: State of New York?

23 MR. PALOMINO: Yes.

24 RECROSS EXAMINATION

25 BY MR. PALOMINO:

1 Q Mr. Nozzolillo, before you gave the figure
2 of fifty million for -- savings for fuel displaced, is that
3 correct, for a three month period?

4 A That is correct.

5 Q Was that in response to a -- was that based on
6 three months of full commercial operation?

7 A Yes, that is correct.

8 Q I didn't ask you that, Mr. Nozzolillo. I asked
9 you what would be the cost of the nuclear fuel during the
10 three month period of low power testing if the exemption
11 were granted.

12 A The cost of that fuel, sir, is reflected in my
13 total capital costs. It is part of the construction
14 schedule. That reflects the cost of the fuel during the
15 testing period.

16 Q But what is it? What amount?

17 A During the three month period?

18 Q Yes.

19 A I don't know.

20 MR. PALOMINO: You don't know. All right.

21 Thank you.

22 JUDGE MILLER: Staff?

23 MR. PERLIS: The Staff has no further questions.

24 JUDGE MILLER: I take it then subject to Board
25 questions we ask through the interrogation of the witness,

1 right?

2 MR. ROLFE: Yes, Your Honor.

3 JUDGE MILLER: What have you done about that
4 exhibit?

5 MR. ROLFE: Your Honor, I have copies of the
6 exhibits that I have pulled out of the prefiled testimony.

7 JUDGE MILLER: Any questions Judge Bright,
8 Judge Johnson?

9 (NOTE: No response.)

10 JUDGE MILLER: All right. You may be excused sir,
11 thank you, and we will entertain your Motions.

12 MR. ROLFE: Your Honor, I move to admit into
13 evidence and bind into the record the testimony of Anthony
14 Nozzolillo on behalf of Long Island Lighting Company, and
15 I also move to admit into evidence LILCO Exhibit LP-5, which
16 is Attachment 1 to the prefiled testimony of Mr. Nozzolillo
17 and is entitled, Basic Premises and Assumptions, and consists
18 of thirteen pages.

19 JUDGE MILLER: What was your number?

20 MR. ROLFE: LP-5.

21 JUDGE MILLER: LP-5. We will take one at a time.
22 Are there any objections?

23 I take it there are not. The testimony, subject
24 to the rulings made by the Board as the witness testified,
25 will be admitted into evidence, and will be not -- and will

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be numbered as transcript pages as we previously discussed.

(Testimony follows.)

LILCO, July 16, 1984

UNITED STATES OF AMERICA
 NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)	
)	
LONG ISLAND LIGHTING COMPANY)	Docket No. 50-322-OL-4
)	(Low Power)
(Shoreham Nuclear Power Station,)	
Unit 1))	

TESTIMONY OF
 ANTHONY NOZZOLILLO
ON BEHALF OF LONG ISLAND LIGHTING COMPANY

- Q.1. Please state your name and business address.
- A. Anthony Nozzolillo, 250 Old Country Road, Mineola, New York.
- Q.2. By whom are you employed?
- A. Long Island Lighting Company (LILCO).
- Q.3. How long have you been employed by LILCO and what positions have you held?
- A. I have been employed by LILCO since 1972. From 1972 through 1983, I was assigned to the Company's Planning Department, served as Manager of the System Planning Division, and have specialized in performing economic analyses of alternative engineering and financial

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options incident to various aspects of LILCO's operations. I have taught qualified LILCO employees the graduate level course in Engineering Studies of Economy. This is a course taken by engineers dealing with how to evaluate various engineering options from an economic standpoint including, among others, such factors as rate of return, depreciation, federal income taxes, operation and maintenance expenses, insurance and property taxes which are an integral part of the total revenue requirement calculation. In 1983 I became a division manager in the Electrical Engineering Department. In November 1983, I accepted a temporary assignment to the Legal Department to work with the Company's legal staff in the current rate case proceeding. My responsibilities in that respect were to coordinate the development of testimony and preparation of other aspects of the rate case. In April 1984, I was appointed Manager of the Financial Analysis and Planning Department.

- Q.4. What are your responsibilities as Manager of the Financial Analysis and Planning Department?

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- A. To develop and maintain financial modelling systems. In this capacity, I am also involved in the analysis of various system development plans for economic impact on both the Company and its consumers. I also play an active role in the development and analysis of financial options for planning purposes.
- Q.5. Will you please describe your educational background?
- A. I graduated summa cum laude from the Polytechnic Institute of Brooklyn in 1972 with a B.S. degree in Electrical Engineering. In 1978, I received an M.B.A. degree from C.W. Post Center of Long Island University. In addition, I attended the Company's graduate institute course in Engineering Studies of Economy and have attended various seminars dealing with advanced engineering economics.
- Q.6. Have you previously testified concerning economic matters?
- A. Yes, I have. I testified in New York State Public Service Commission cases 27374 and 27375 on the economic and financial impact of the inclusion of Construction Work in Progress (CWIP) in LILCO's rate base. In case

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28553, I presented the Company's financial statistics and quality indicators which would result from \$281,000,000 of permanent rate relief becoming effective on October 1, 1984. I have also testified regarding the economics of coal conversion for LILCO's Fort Jefferson Units #3 and #4 before the Department of Environmental Conservation.

Q.7. What is the purpose of your testimony in this proceeding?

A. My testimony will present the economic benefits to LILCO's customers, in terms of present worth of revenue requirements, resulting from a three-month earlier commercial operating date for the Shoreham Nuclear Power Station which may be achieved if the exemption permitting low power testing is granted as requested.

Q.8. What do you mean by present worth of revenue requirements?

A. It is appropriate to look at benefits in terms of LILCO's revenue requirements because rates are normally set on that basis. In discussing revenue requirements over a period of time, it is necessary to discuss them

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in terms of present worth which allows a direct comparison of revenue requirements over different periods of time. I have simply looked at the present worth sum of those revenue requirements over a period of years during which LILCO's operation will be affected by the generation of power at Shoreham.

Q.9. In performing your analysis of potential economic benefit, what commercial operating dates for the Shoreham plant did you consider?

A. According to the Company's scheduling estimates, July 1, 1985 is the earliest date that commercial operation could commence if all required permits are granted in a timely fashion. The alternate in-service date I considered is October 1, 1985, which represents a three-month slip from July 1985. For purposes of analyzing any potential economic benefit, I have analyzed two synchronization dates for the July in-service date. Obviously, the dates lack certainty. Nevertheless, my analysis using either of these dates gives a good indication of the magnitude of the potential economic benefit if low power testing can be conducted early and allow the plant to reach commercial operation sooner.

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If the dates were changed, the range of the potential benefit might change, but in my opinion there would still be a benefit if the plant achieves commercial operation 3 months earlier as a result of this exemption.

Q.10. What are the economic benefits for a July 1, 1985 rather than an October 1, 1985 in-service date?

A. In terms of present worth of revenue requirements, these benefits are in the range of \$8-45 million.

Q.11. How did you calculate this range of benefits?

A. To quantify this benefit, I used two computer programs which LILCO routinely uses in its financial forecasts. To establish an estimate of the total annual revenue requirements for the scenarios outlined above, I used LILCO's Strategic Financial Planning model (SFP). The SFP model is a computer based long-range financial tool for combination electric and gas utilities. This computer model makes financial and revenue forecasts for a utility based on a set of assumptions and/or projections concerning energy demand, capital expenditures, operating costs, and financial and regulatory policies. This model is used by LILCO in its own internal long

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range planning and has been used by the Public Service Commission and the State Energy Office. For example, the State Energy Office has used it in matters related to the State Energy Master Plan and for analyzing the Nine Mile Point 2 investment. I utilized LILCO's Planning Production Cost Evaluation Program to estimate total production fuel costs. This program simulates the dispatch of generation (and interchange power availability) to meet the system load. Again, the Planning Production Cost Evaluation Program is routinely used in normal business operation by LILCO. Moreover, the model was reviewed and adopted by the Technical Committee in PSC Case 28252 under the title "Shoreham Nuclear Generating Station Ratemaking Principles." The results of this program were an input to the SFP model.

Q.12. What are the basic assumptions that you used in performing your analysis?

A. The basic assumptions are contained in a 13-page document entitled "Basic Premises and Assumptions" which was prepared under my direction and supervision and is Attachment 1 to this testimony. I have reviewed and am

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familiar with all of the assumptions. Each is based on information routinely generated by LILCO or on my professional judgment, where such information is not available.

Q.13. Mr. Nozzolillo, you have stated that the benefits for an earlier in-service date are in the range of \$8-45 million in terms of present worth of revenue requirements. What are the significant elements that constitute this economic benefit?

A. There are several elements. The earlier Shoreham operates, the sooner consumers start realizing the benefits resulting from the displacement of fossil fuel. Also, the sooner the plant goes commercial, the lower the ultimate cost of the facility. A lower total investment translates into lower annual revenue requirements for return on net investment, depreciation, associated federal income taxes and gross revenue taxes, all of which comprise the revenue requirements on the basis of which rates are set. This is a benefit that will continue over the life of the facility.

All of these factors are reflected in my analysis.

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Q.14. Mr. Nozzolillo, why is there such a broad range in the benefits which you have established?

A. The upper range of \$45 million results from the tax depreciation associated with synchronization of the plant into our system if the synchronization were to occur in 1984. The \$8 million figure assumes a 1985 synchronization date. Another factor that affects the benefits is the timing as to when LILCO can utilize the investment tax credit carried forward as a credit on LILCO's tax returns. After 1984, this amount is well in excess of \$200 million. The sooner the Company is able to utilize this credit for federal income tax purposes, the more beneficial it is for its consumers due to the time value of money.

Q.15. Please summarize your testimony.

A. If, as a result of obtaining the requested exemption, Shoreham reaches commercial operation three months sooner than it would otherwise, LILCO's customers will see a benefit of \$8 to \$45 million dollars in terms of present worth of revenue requirements. Therefore, from the standpoint of economics, expediting the commercial operation of Shoreham is in the public interest.

1 Your Exhibit No. 5, which is Attachment 1 to
2 the prefiled testimony, is there any objection.

3 MR. PALOMINO: Yes, Your Honor. I object on
4 the grounds the witness stated that for the purpose of
5 discussing the benefit, he just took two different dates
6 for commercial operation, really without any regard to
7 low power exemption.

8 And for that reason I think it is irrelevant
9 to the issue before the Board, and I renew my objection
10 to strike this testimony.

11 JUDGE MILLER: Staff?

12 MR. PERLIS: I will just repeat the arguments
13 I made yesterday, if the Board wants to hear them again. I
14 think one of the questions here is whether there are benefits
15 to accrue from earlier operation, and the correlary of that
16 would be that earlier operation could occur with an
17 exemption. I think the testimony is based on that, again,
18 conditional.

19 JUDGE MILLER: What are your remarks addressed
20 to?

21 MR. PERLIS: I believe --

22 JUDGE MILLER: What are you talking about?

23 MR. PERLIS: If I understand Mr. Palomino's
24 Motion to Strike --

25 JUDGE MILLER: Well, that has been overruled.

1 MR. PERLIS: I thought he just made the same
2 motion again.

3 JUDGE MILLER: He may have renewed it, but
4 he understands it will be the same ruling. But he made
5 an objection. That is what I was asking you to address.

6 MR. PERLIS: I thought his objection was
7 the same thing.

8 JUDGE MILLER: Well, I don't know. You heard
9 it, so you may do it any way you want.

10 MR. PERLIS: I really have nothing further to
11 add to it.

12 JUDGE MILLER: Anything from LILCO?

13 MR. ROLFE: Yes, Judge. LILCO does not believe
14 the objection is well founded on two grounds, I guess.

15 One, the Board has already ruled on the
16 relevance of the testimony, and denied the Motion to Strike.
17 Once you begin with that premise, what is contained in the
18 exhibit are the basic premises and assumptions which Mr.
19 Nozzolillo employed in arriving at his analysis.

20 So, it is clearly relevant to his analysis. He
21 refers to it in his testimony, and it is necessary in order
22 to let the driver of fact understand the basis for Mr.
23 Nozzolillo's analysis.

24 JUDGE MILLER : And the bases of his analysis
25 or analyses are not evident from his testimony, as testimony?

1 MR. ROLFE: Your Honor, he did not repeat all
2 of these assumptions in his testimony. Instead, for
3 brevity sake, he repeated them all in this thirteen page
4 attachment.

5 JUDGE MILLER: He was certainly cross examined
6 about some of them.

7 MR. ROLFE: Yes, he was, which is another
8 additional reason why the exhibit ought to be in, so that
9 one would understand what the cross examination was all
10 about.

11 JUDGE MILLER: So you are going to proffer
12 that as an additional ground, I suppose.

13 MR. ROLFE: Yes, Your Honor.

14 JUDGE MILLER: Let us see the exhibit, please.
15 Overruled. We do believe that the exhibit further explains
16 the bases of some of the witness' testimony, both in direct
17 and also in cross examination. So, we are going to admit
18 the exhibit as an exhibit. It will not go into the transcript.
19 That is LILCO's Exhibit LP-5, is it not?

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20 (Document referred to above
21 is admitted into evidence
22 as LILCO Exhibit LP-5.)

23 MR. SEDKY: Judge Miller. Just a housekeeping
24 matter, Your Honor. We marked for identification SC LP-14.
25 I know that it is your practice -- I understand it is your

1 practice to have us move in our exhibits in our case.

2 However, if there are any objections to the
3 admissibility of this exhibit at this time.

4 JUDGE MILLER: We prefer to do so, so we
5 assure the foundation. However, since this is inter-
6 related, let me inquire, and if there is not objection we
7 would admit it out of order. Is there any objection?

8 MR. PERLIS: The Staff has no objection to
9 its admission.

10 MR. ROLFE: LILCO has no objection.

11 JUDGE MILLER: State of New York?

12 MR. PALOMINO: No.

13 JUDGE MILLER: It will be admitted, as I say,
14 a little out of order, but for obvious reasons, at this
15 time. Suffolk County's LP-14 for identification is
16 admitted into evidence.

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(Document referred to above
18 is admitted into evidence as
19 Suffolk County Exhibit LP-14.)

20 JUDGE MILLER: Okay. Anything further in the
21 way of housekeeping matters? If not, you may be excused,
22 sir. Thank you.

23 (Witness stands aside.)

24 JUDGE MILLER: Who is your next witness?

25 MR. ROLFE: LILCO calls to the stand Brian

1 McCaffrey.

2 JUDGE MILLER: Does Mr. Brian McCaffrey have
3 any attachments to his testimony?

4 MR. ROLFE: Yes, Judge Miller.

5 JUDGE MILLER: File it as we go along.

6 MR. ROLFE: I will do that.

7 MS. LETSCHE: Could we take a short break.
8 We are switching sides up here.

9 JUDGE MILLER: I will be glad to give you
10 fifteen minutes.

11 End 5.
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(Short recess taken.)

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1 Whereupon,

2 BRIAN R. McCAFFREY

3 was called as a witness on behalf of LILCO and, having
4 been first duly sworn by Judge Miller, was examined and
5 testified as follows:

6 DIRECT EXAMINATION

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7 BY MR. EARLEY:

8 Q Mr. McCaffrey, would you state your name and
9 business address for the record, please.

10 A My name is Brian McCaffrey. My business address
11 is Long Island Lighting Company, Post Office Box 618,
12 Wading River, New York.

13 Q Mr. McCaffrey, do you have in front of you a
14 document entitled "Testimony of Brian R. McCaffrey on
15 Behalf of Long Island Lighting Company," consisting of 33
16 pages and four attachments?

17 A Yes, I do.

18 MR. EARLEY: Judge Miller, Attachment 1 to
19 Mr. McCaffrey's testimony is a copy of a document entitled
20 "Professional Qualifications." Pursuant to our practice,
21 I will not ask that that be marked as an exhibit.

22 JUDGE MILLER: That will be regarded as part
23 of the direct examination.

24 MR. EARLEY: Yes, sir. I request that Attachment
25 2 to the testimony, which is a portion of the partial

1 initial decision issued by the Shoreham Licensing Board be
2 marked as LP Exhibit 6.

3 JUDGE MILLER: All right, that will be so marked.

4 (The document referred to
5 was marked LILCO Exhibit LP-6
6 for identification.)

7 INDEX MR. EARLEY: Attachment 3 to that testimony,
8 which is a portion of LILCO's proposed opinion, findings
9 of fact and conclusions of law in the form of a partial
10 initial decision dated January 17th, 1983, I request
11 that that document be marked as LILCO's Exhibit LP-9.

12 JUDGE MILLER: It may be marked.

13 (The document referred to was
14 marked LILCO Exhibit LP-7
15 for identification.)

16 INDEX MR. EARLEY: And Attachment 4 to Mr. McCaffrey's
17 testimony, which is an NRC order entitled "Order Requiring
18 Diesel Generator Inspection (Effective Immediately) for
19 the Grand Gulf Nuclear Station," I request that that be
20 identified as LILCO Exhibit LP 8.

21 JUDGE MILLER: It may be so marked.

22 (The document referred to was
23 marked LILCO Exhibit LP-8
24 for identification.)
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1 BY MR. EARLEY:

2 Q Mr. McCaffrey, do you have any corrections to
3 your testimony?

4 A No, I do not.

5 Q Mr. McCaffrey, is that testimony true and correct
6 to the best of your knowledge and belief and do you adopt
7 it as your testimony in this proceeding?

8 A Yes, it is, and yes, I so adopt it.

9 Q Mr. McCaffrey, would you please summarize your
10 professional qualifications for the Board?

11 A Yes. At this point I am Manager of Nuclear'
12 Licensing and Regulatory Affairs for the Long Island
13 Lighting Company. I have held the position with that title
14 since approximately May of this year.

15 In that position I am responsible for the overall
16 regulatory organization for the company. That has to do
17 with the dealings with the Nuclear Regulatory Commission,
18 all incoming regulatory and technical issues the company
19 must address.

20 I am responsible for the company's assembling
21 of positions on regulatory issues and forwarding that
22 material back to the Nuclear Regulatory Commission.

23 In addition, I am responsible for all the
24 Atomic Safety and Licensing proceedings before the various
25 Licensing Boards, including this proceeding.

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1 My organization also evaluates emerging and
2 evolving regulatory issues as they could impact future
3 operation of the station.

4 Prior to the position I hold now, I was Manager
5 of Nuclear Compliance and Safety within the Nuclear
6 Operations Support Department of LILCO's nuclear organization.
7 I held that position for approximately two years.

8 In that position I was again responsible for all
9 the preparation for and conduct of various proceedings before
10 the Atomic Safety and Licensing Boards. I was responsible
11 for developing the long-term licensing support organization
12 for Shoreham's operating phase. I served as board engineer
13 to the Corporate Nuclear Review Board which oversees all
14 operations of the nuclear station.

15 In addition, I served as Chairman of the
16 Independent Safety Engineering Group, an independent
17 engineering group whose purpose it is to assess issues that
18 have emerged at operating stations throughout the country
19 as provided to us from the Institute of Nuclear Power
20 Operations and to cause those events to be evaluated for
21 potential applicability to the Shoreham Station.

22 I was also responsible for the corporate
23 emergency planning effort in preparation for the operating
24 phase.

25 Prior to this position, I served as Manager of

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1 Project Engineering for the Shoreham Project with respon-
2 sibilities for all licensing and engineering activities for
3 the Shoreham Station. In that position the efforts of
4 Stone and Webster, the architect/engineer, General Electric
5 Company and other technical consultants came under my
6 organization and again in that capacity I was responsible
7 for the licensing of the plant, the ASLB proceedings and the
8 day-to-day interfaces with the Nuclear Regulatory Commission
9 and the Inspection and Enforcement Division of the NRC.

10 Prior to that position, I was Project Engineer
11 for the Shoreham Station responsible for all engineering and
12 procurement of equipment with General Electric, Stone and
13 Webster and our other external and internal engineering
14 personnel.

15 Prior to that position, I served as the Project
16 Senior Licensing Engineer for the Station responsible for
17 all the day-to-day licensing activities of the plant, the
18 final Safety Analysis Report and all submittals to the
19 Commission and developing a corporate position on a given
20 regulatory issue.

21 Indeed, also at that point, again the preparation
22 for the ASLB proceedings.

23 Prior to that, I was a member of the Power
24 Engineering Department at LILCO where I served as lead
25 mechanical engineer for nuclear projects. That covered

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1 the specifications for drawings and procurement of equipment
2 for the various nuclear projects which the company had
3 underway at that time, including the Jamesport Nuclear
4 Stations and the Shoreham Station.

5 I also served as Project Coordinator for gas
6 turbine installations with the overall responsibility to
7 manage the schedule, construction, engineering, check-out
8 and operations of the gas turbine projects the company was
9 putting on line in that time period.

10 I joined LILCO in January of 1973. Prior to that
11 I was with the Grumman Aerospace Engineering Corporation.

12 I have a master of science degree in nuclear
13 engineering from Polytechnic Institute of New York. I have
14 a master of science in aerospace engineering from Penn State
15 University and I have a bachelor of science degree in
16 aerospace engineering from the University of Notre Dame.

17 I am a Member of the American Society of
18 Mechanical Engineers. I am a member of the American
19 Nuclear Society, the Long Island Section and am a registered
20 professional engineer in the State of New York.

21 MR. EARLEY: Judge Miller, Mr. McCaffrey is
22 ready for voir dire examination.

23 JUDGE MILLER: Very well, voir dire examination.
24 The County.

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1 MR. DYNNER: Judge Miller, could I request that
2 counsel for LILCO identify in what respect Mr. McCaffrey
3 is being proffered as an expert in this case with respect
4 to his testimony?

5 JUDGE MILLER: Yes.

6 MR. EARLEY: Mr. McCaffrey is being proffered
7 as an expert in nuclear licensing matters. In particular,
8 his testimony will relate to nuclear licensing as it relates
9 to the Shoreham Station. He will be addressing several
10 matters that were raised in the Commission's May 16th order
11 concerning this proceeding.

12 In particular, he addresses the applicant's good
13 faith effort to comply with the regulation from which the
14 exemption is sought and he will also be addressing the
15 equities of the situation that have arisen due to the
16 lengthy licensing proceeding attendant to trying to license
17 the Shoreham plant.

18 JUDGE MILLER: You may proceed.

19 VOIR DIRE

20 BY MR. DYNNER:

21 Q Mr. McCaffrey, much of your written testimony
22 has to do with the three emergency diesel generators
23 manufactured by Transamerica Delaval and the way in which
24 those diesel generators were purported to comply with
25 GDC 17 as far as LILCO's efforts were concerned.

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1 What experience have you had in the design of
2 large diesel engines?

3 A I have no direct experience in the design of
4 diesel engines. My only involvement would have been as
5 Project Engineer and Manager of Engineering and Licensing
6 at the plant where the overall engineering organizations
7 would have come under my general responsibility, and they
8 would have handled the specifications for those diesels.

9 Q Well, have you ever participated in designing
10 a diesel engine?

11 A No.

12 Q Did the people at LILCO that you had contact with
13 involve themselves in designing the diesel engine?

14 A Insofar as the specification that was produced
15 by Stone and Webster as requested by LILCO addressed the
16 engineering requirements for those diesel engines, then, yes.

17 Q Well, that was a procurement specification,
18 wasn't it, Mr. McCaffrey?

19 A That is correct.

20 Q So those people didn't actually design the
21 diesel, did they?

22 A As in the procurement for any equipment for
23 a nuclear power station, one specifies general requirements
24 and acceptable manufacturers and they bid on it and supply
25 that equipment. The detailed design effort certainly lies

Sim 6-9

1 with the manufacturer. You specify what criteria he must
2 meet, what loads and what quality requirements, et cetera,
3 and he bids to that specification.

4 Q So your testimony is that the people at LILCO
5 did not participate in the actual design of the diesel
6 engines; isn't that true?

7 A Could you define what you mean by actual design?

8 Q Well, you just defined what you meant by design
9 I think. I mean did they design the diesel engine? Did
10 they prepare the design drawings?

11 A No.

12 Q Did they prepare the design concept for the
13 engine?

14 A Yes, insofar as they have specified the operating
15 requirements for the machine.

16 Q So the specifications had to do with performance
17 requirements, didn't they, Mr. McCaffrey?

18 A It was not limited to just performance. A
19 specification typically specifies material properties, NDE
20 requirements and things of that nature.

21 Q Now what was your involvement, Mr. McCaffrey,
22 in terms of coming up with these specifications?

23 A The purchase specification for those machines
24 was in the time frame of '73 to '74. So at that time I
25 was not personally involved in those specifications.

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1 Q Do you have any experience with the manufacturer
2 of a large diesel engine?

3 A No.

4 Q Do you have any experience with the operation
5 of a large diesel engine?

6 A Yes.

7 Q Please describe that experience?

8 A As I said before in my description of my back-
9 ground, I served for two years as Chairman of the Independent
10 Safety Engineering Group. As such the engineers on my
11 staff were routinely involved in witnessing and participating
12 in testing on the TDI diesels throughout the year 1983 and
13 even following the crank shaft failure in August there was
14 participation.

15 I have personally observed the machines in
16 operation and I have stood on top of the machines when
17 they were running. So I have observed their operation and
18 participated.

19 In addition, in my position as Board Engineer
20 to the Nuclear Review Board, the Nuclear Review Board was
21 always interested in the development of the TDI diesels and
22 routinely would ask for presentations at the meetings on the
23 status of the machines and the company's efforts to bring
24 them into a state of availability.

25 Q Did you ever personally operate one of the diesels

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1 at Shoreham?

2 A No.

3 Q Now you mentioned that you supervised or had
4 some kind of supervision over some people that witnessed
5 the diesel testing; isn't that correct?

6 A That is correct.

7 Q Did you ever personally involve yourself in the
8 actual witnessing of those tests in the same way as the
9 people you supervised as opposed to casual observations?

10 MR. EARLEY: Objection. I think counsel is
11 mischaracterizing the prior testimony. The witness did not
12 say that he casually observed. He described his involvement.

13 JUDGE MILLER: Well, that is great, but as an
14 expert witness I am sure he can protect himself.

15 You may answer.

16 THE WITNESS: Can I have the question again?

17 BY MR. DYNNER:

18 Q Yes. You just testified again that you had some
19 sort of supervision or control over some people that were
20 witnessing the tests, and let me rephrase the question that
21 follows to make it clearer to you.

22 For what purpose were those people witnessing the
23 tests of the diesel engines at Shoreham?

24 A There were two purposes. The concept of the
25 Independent Safety Engineering Group, as testified before

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1 the Brenner Board on a prior occasion, was that the
2 Independent Safety Engineering Group is not only a group
3 that sits in their office and evaluates instances around the
4 country which are called significant event reports and
5 significant operating experience reports, which we get
6 from INPO, our industry organization for its applicability
7 to the plant, but we have a requirement which is contained
8 in our procedures that that organization must spend a large
9 share of their time out in the plant observing the plant
10 operations, control room operations and any operations.

11 So in that sense the TDI diesels come under
12 that overview of surveillance as we call it.

13 In addition, the Independent Safety Engineering
14 Group participated on shift with the startup organization
15 and monitored the conformance to the preoperational test
16 specifications, witnessed the various steps, witnessed the
17 OQA signoff steps and were intimately involved minute by minute
18 and hour by hour observing the testing of those machines.

19 Q All right. Now, Mr. McCaffrey, did you yourself
20 personally engaged in the surveillance aspect of this
21 witnessing by the ISEG group that you supervised?

22 A Not to the same degree as my ISEG engineers did.
23 I would routinely meet with them to understand what has
24 transpired in the days or currently that day. If there was
25 some issue that I might want to be aware of, or if there

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1 was something I wanted to go look at in the rooms, I would
2 pass through the rooms to observe that not only my people
3 were performing their jobs in being there, but just the
4 general state of testing and how the testing was coming.

5 Q And when did this supervision of the surveillance
6 activity take place, beginning when approximately?

7 A What surveillance are you speaking of? I
8 described two periods.

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Q The surveillance you just discussed.

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A I believe I've discussed both, both as a routine matter for the last couple of years and then a period earlier this year which was rerunning the pre-operational test program following the crankshaft failure.

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Q Well, I haven't gotten to the pre-operational tests. I'm talking about the general surveillance.

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A Well, I was discussing the pre-operational testing.

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Q Yes. We will get to that, Mr. McCaffrey. But I'm talking about the general surveillance, and you said that you got information from the people that you supervised and you also said that you passed through the room once in awhile; is that correct?

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A When I spoke to that, I was speaking to the period of this year in the conduct of pre-operational testing prior to the crankshaft failure. I can define that as a general surveillance period. It was a different concept as far as my personal involvement.

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I would not have necessarily gone to the rooms to observe any particular testing at that period.

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Q All right. So, prior to 1984 you did not actually witness the diesel engine operation for any purpose; is that correct?

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A Not me personally. I would rely upon the

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1 information from my staff as well as information conveyed
2 to the Company at the Nuclear Review Board meetings.

3 Q Right. And then in 1984, you say you got
4 involved with the pre-operational tests in terms of passing
5 through the diesel rooms once in a while and getting informa-
6 tion from your staff; is that correct?

7 A Generally correct, although I wouldn't neces-
8 sarily agree with the characterization as passing through.
9 I was there a significant amount of time.

10 Q All right. Why don't you describe exactly what
11 you did?

12 A As the machine was in testing, as I said, our
13 ISEG staff was on shift. So every time, every minute of
14 the day that there was testing going on with the machines
15 the independent safety engineering group was on shift over-
16 seeing the implementation of the pre-operational test program
17 witnessing various steps in the process and giving me routine
18 reports back on the safety of the machine.

19 I would, during that period, at least once every
20 day or two, go to the machines while they were in operation.
21 If some particular difficulty had developed, I was called,
22 if I wasn't at the site at that time, to be appraised of some
23 development that came up during the testing. So, I would
24 consequently be aware of the state of the machine.

25 And that was necessary in my function as Chairman

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of ISEG to have that awareness.

2 Q So, in 1984, Mr. McCaffrey, how many times would
3 you say that you personally observed the diesel generators
4 in operation?

5 Just a rough figure.

6 A Twenty-five times.

7 Q Twenty-five times? And that was for the purpose
8 of looking at the pre-operational testing of those machines;
9 is that correct?

10 A That's correct. Following the crankshaft failure,
11 the machines were rebuilt. The Company voided the pre-
12 operational testing that had been conducted previously and
13 we ran the pre-operational test program including the in-
14 tegrated logical test this year.

15 Q All right. Now, Mr. McCaffrey, did you personally
16 test any of the emergency diesel generators?

17 MR. EARLEY: Judge Miller, at this point I would
18 like to interpose an objection. The line of questioning
19 has gone a long way and is getting into details of Mr.
20 McCaffrey's personal involvement in various aspects of
21 diesel generators.

22 As I indicated, Mr. McCaffrey is not being
23 proffered as a diesel generator expert to testify on the
24 details of the TDI diesel generators. His testimony addresses
25 what the Commission indicated they wanted to see addressed,

#7-4-SueT1

1 the Applicant's good faith effort to comply with regula-
2 tions. The Commission did not say that we should litigate
3 here whether everything was done right or wrong with the
4 TDI diesel generators. That's the subject of a separate
5 litigation.

6 We can continue on this line, but I think that
7 we are just spending a lot of unnecessary time.

8 JUDGE MILLER: What is the purpose of this
9 closer examination?

10 MR. DYNNER: Yes, Judge --

11 JUDGE MILLER: You have covered a certain issue.
12 Now, it might be going into unnecessary detail unless you
13 have some purpose.

14 MR. DYNNER: Yes. I have a specific reason,
15 Judge Miller, and that is this. From Pages 5 on to Page 17
16 of Mr. McCaffrey's testimony, his testimony goes into the
17 details of how LILCO, in his words, the efforts that LILCO
18 made to ensure that the TDI diesel generators operated
19 reliably and therefor met the requirements of GDC-17. As
20 he states in answer to the question on Page 7 of his
21 testimony.

22 And Mr. McCaffrey's testimony then goes on to
23 cover specifically the areas of the procurement of these
24 diesel engines. He goes on to talk about the pre-operational
25 test programs that were done on the diesel engines, the C&IO

#7-5-SueT 1 testing on these diesel generators. He talks about the
2 problems which arose with respect to the diesel generators
3 on Page 9. He talks about the failures of the crankshaft,
4 and he talks about the steps that LILCO took to address
5 some of the various problems on the diesel generators.

6 He talks about, on Page 11, what was found during
7 the disassembly of the diesel generators. He talks about,
8 on Page 12, the DRQR program which was designed to respond
9 to problems involving the diesel generators.

10 And the entire testimony, if one looks at it,
11 is specifically concerned with diesel generators. Now,
12 if counsel is willing to stipulate that Mr. McCaffrey's
13 knowledge concerning the diesel generators is all second-
14 hand, then I can dispense with voir dire as it regards
15 specifically Mr. McCaffrey's personal knowledge of the
16 diesel generator matters.

17 Otherwise, I think it's imperative because of
18 the testimony --

19 JUDGE MILLER: I thought you were into the sub-
20 stantive matters. I think there is no question you are
21 far beyond the scope.

22 MR. DYNNER: Well, call it anything you wish to
23 call it, Judge --

24 JUDGE MILLER: I call it beyond voir dire and
25 sustain the objection.

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MR. DYNNER: Yes.

JUDGE MILLER: And I suggest you go ahead because you don't want to get into the details on voir dire. You are quite correct in your summary of the testimony, and we are certainly going to give you ample opportunity to cross-examine, but I think you may be getting much too far --

MR. DYNNER: I have no -- obviously we can put it in any pigeonhole we like. I will proceed if you like.

JUDGE MILLER: Fine.

MR. DYNNER: Thank you.

BY MR. DYNNER: (Continuing)

Q Mr. McCaffrey, I would like you to turn to Page 5, please, of your written testimony.

A (The witness is complying.)

MR. DYNNER: Judge Miller, just for clarification now, we are finished with voir dire and I'm going to begin the general cross-examination.

JUDGE MILLER: Let me, first of all, give other counsel the opportunity. They may have no further but I don't know.

State of New York?

MR. PALOMINO: No voir dire, Judge.

MR. PERLIS: The Staff has no voir dire.

JUDGE MILLER: Okay. We will now -- is there anything you are required to put in the record before we

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2 go from voir dire into substantive testimony and cross-
3 examination?

4 MR. EARLEY: Judge, if the Board desires the
5 witness can summarize his testimony. If the Board does
6 not desire, the written testimony speaks for itself.

7 JUDGE MILLER: I don't think it's necessarily.
8 Counsel has given it a bird's-eye view.

9 I don't think it's necessary, but we won't pre-
10 clude you if you wish.

11 MR. EARLEY: The witness is ready for cross-
12 examination.

13 JUDGE MILLER: You may proceed now with cross-
14 examination.

15 MR. DYNNER: Before we start, I will, Judge
16 Miller, move to strike this witness' testimony from Pages 5,
17 that is beginning with the heading "LILCO's Good Faith
18 Efforts" and continuing to Page 17 where the new heading,
19 entitled "Cost of the Shoreham Licensing Proceeding" begins,
20 on the grounds that this witness' testimony deals principally
21 with emergency diesel generators at Shoreham of which he
22 has no personal involvement as to the matters he is testify-
23 ing, but is testifying on the basis only of secondhand
24 knowledge that he received from his staff or from documents.

25 JUDGE MILLER: Well, that will be denied.

MS. LETSCHE: Judge Miller, in addition the County

#7-8-SueT 1

wishes --

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JUDGE MILLER: Now, you know there is a certain practice with counsel. You take one witness at a time or you take one cross at a time. So, I don't think that you are at bat.

6

MS. LETSCHE: Let me just explain, Judge Miller.

7

JUDGE MILLER: What are you going to explain?

8

MS. LETSCHE: I'm going to explain why it is that I'm about to say something --

9

10

JUDGE MILLER: Okay.

11

MS. LETSCHE: -- since I'm different counsel from my colleague, Mr. Dynner.

12

13

JUDGE MILLER: Yes.

14

MS. LETSCHE: Mr. McCaffrey's testimony is, as I believe Mr. Earley indicated and as Mr. McCaffrey's testimony itself indicates, a discussion of two subject areas --

17

18

JUDGE MILLER: We know what it discusses. Why are you talking instead of counsel who is cross examining?

19

20

MS. LETSCHE: Because Mr. Dynner is going to conduct the cross-examination of the portion of Mr.

21

22

McCaffrey's testimony which deals with the --

23

JUDGE MILLER: We expect counsel who cross examines to conduct the entire cross examination of that particular witness. You can switch around as you wish between or among

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witnesses, but you can't use cross-fire. We expect counsel
2 who starts to go ahead and finish it and then we will go
3 to other --

4

MR. DYNNER: Let me just make one thing clear,
5 if I may, Judge Miller.

6

JUDGE MILLER: Yes.

7

MR. DYNNER: The portion of Mr. McCaffrey's
8 testimony entitled "LILCO's Good Faith Efforts" deals
9 principally, as I've said, with diesel generators.

10

JUDGE MILLER: Correct.

11

MR. DYNNER: The portion beginning on Page 17
12 is entitled, "Cost of the Shoreham Licensing Proceeding"
13 and deals with an entirely different subject matter. And
14 for the convenience and with the Board's indulgence, that
15 we would beg of you, we would like to divide, since those
16 are two very different areas, both as regards subject matter
17 and qualification, we would like very much to divide the
18 cross-examination because those are two separate matters
19 so that I can handle the specific issues concerning Pages 5
20 through 17 on the diesel generators and GDC-17, and then I
21 would like to ask the Board to permit Ms. Letsche to take
22 up the entirely separate issue of the cost of the Shoreham
23 licensing procedure with your indulgence.

24

MR. EARLEY: Judge Miller --

25

JUDGE MILLER: Let me say, first of all, that we

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1 have been lenient, and we should be, in permitting counsel
2 to take up different witnesses, and as you say rearrange the
3 bodies at the table, and we understand the convenience of
4 that. However, now you are starting to subdivide the rule
5 that we expect.

6 While you may divide the tasks of counsel, we
7 don't expect to have subdivisions of it. We will think
8 about it, but we are not inclined because we don't want
9 to have this thing proliferating to where you are bringing
10 up a new team first for every witness and then for portions
11 of the witnesses. We think that's really not fair to counsel,
12 who like football games before they permitted specialization
13 you had to have all purpose halfbacks, they had to tackle.

14 Now, the other counsel aren't similarly situated.
15 I will hear from them. We will bear in mind what you say.

16 MR. DYNNER: And I will assure you, Judge Miller,
17 that this is the only instance --

18 JUDGE MILLER: This is the only one?

19 MR. DYNNER: -- in this trial, and you don't have
20 to worry about our trying to set a precedent. This is a
21 unique situation.

22 JUDGE MILLER: All right. If this is the only
23 instance, we will allow then the segmentation to the extent
24 that you have described it.

25 MR. DYNNER: Thank you, sir.

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2 MR. EARLEY: Judge Miller, may LILCO put its
3 objection on the record? LILCO objects to double-teaming
4 this witness. It has been the practice in this proceeding
5 and other proceedings to have one counsel handle the cross-
6 examination of a particular panel of witnesses.

7 County has had the witness' testimony for several
8 weeks, and all counsel have to prepare on many different
9 subjects for cross-examination which we obviously are not
10 experts on. I think the County should be required to have
11 one counsel prepare the cross-examination and cross-examine
12 the witness.

13 JUDGE MILLER: We understand, both as practitioners,
14 recognize the general rule we don't allow whipsawing. I
15 think that one exception -- only one has been asked for --
16 on the stated grounds, we will indulge discretion to that
17 limited extent.

18 Objection overruled. You may proceed.

19 CROSS EXAMINATION

20 BY MR. DYNNER:

21 Q Mr. McCaffrey, would you please turn to Page 5
22 of your testimony?

23 A (The witness is complying.)

24 Q Now, you say, Mr. McCaffrey, that the original
25 design of the Shoreham plant included an onsite power source
that was intended to meet the requirements of GDC-17. What

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was the design of the Shoreham plant that was so intended?

2 A What I'm referring to here is the preliminary
3 safety analysis report which accompanied LILCO's application
4 for a construction permit which specified three onsite
5 diesel generators for the purposes of providing for the
6 required regulatory assumption of loss of AC power.

7 Q Did that preliminary safety analysis report later
8 become a final safety analysis report with the necessary
9 and appropriate modifications made to it?

10 A Well, it didn't become anything. One creates a
11 new document called a final safety analysis report when one
12 files for an operating license, and LILCO did so in 1975
13 roughly.

14 Q So, is it correct that the three diesel generators
15 to perform the onsite emergency power system were procured
16 under the requirements of the preliminary safety analysis
17 report?

18 A That would be correct, but one doesn't procure
19 a piece of equipment to the PSAR. One provides a regulatory
20 compliance in the PSAR. The engineering specification for
21 the procurement of that piece of equipment is a document
22 by which one converts the commitments in the PSAR to the
23 equipment one is buying.

24 Q And that procurement document is a specification;
25 is that correct? Included a specification for the diesels?

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A That's correct.

2

Q And did that specification relate to the performance requirements of the diesel engines?

3

4

A Yes.

5

Q And were those performance requirements intended to comply with the requirements of GDC-17?

6

7

A Yes.

8

Q All right. Mr. McCaffrey, you testified here as to the requirements of GDC-17. What are those requirements?

9

10

A Well, as I currently read GDC-17, it requires that a nuclear plant both have onsite and offsite sources of AC power to protect the core, reactor containment, et cetera.

11

12

Q Well, what does it specifically say as to the requirements for the onsite emergency power system?

13

14

JUDGE MILLER: Does the witness wish to have a copy of the regulation?

15

16

WITNESS MC CAFFREY: That would be helpful.

17

(Mr. Earley provided the witness with a book.)

18

BY MR. DYNNER: (Continuing)

19

Q, If you have the same book I do, Mr. McCaffrey, it's on Page 466 if it's the Code of Federal Regulations.

20

21

A I have it.

22

Q All right. Now, that helps to refresh your

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2 recollection perhaps. What does GDC-17 say about the
3 requirements for the onsite electrical power system?

4 A If I could have a moment.

5 Q Sure.

6 A (The witness is looking at the book provided
7 to him.)

8 Could I have the question?

9 Q Yes. What does GDC-17 say about the requirements
10 for the onsite electric power system?

11 A Well, it says here, summarizing, that one has
12 to have an onsite source of AC power. One has to have a
13 means of providing that AC power to the various plant
14 equipment, and that in a nutshell is what it says, in
15 addition to discussion about the offsite system.

16 Q Let me help you out and point the Board to the
17 sentence that I think is controlling by reading into the
18 record the specific sentence, and that says: The safety
19 function for each system, assuming the other system is not
20 functioning, shall be to provide sufficient capacity and
21 capability to assure that (1) the specified acceptable fuel
22 design limits and design conditions of the reactor coolant
23 pressure boundary are not exceeded as a result of anticipated
24 operational occurrences, and (2) the core is cooled and
25 containment integrity and other vital functions are maintained
in the event of postulated accidents. Unquote.

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2 Now, was it LILCO's intention that these three
3 emergency diesel generators that were procured under this
4 specification that you testified to would assure that the
5 core was cooled under postulated accidents?

6 A With respect to the TDI diesels?

7 Q TDI meaning Transamerica Delaval, Inc. diesels,
8 right?

9 A Yes.

10 Q Yes, in answer to your question.

11 A And the answer is yes.

12 Q All right. Now, in order to meet that requirement
13 to assure that the core would be cooled under postulated
14 accidents, the specification you testified had a performance
15 requirement, didn't it?

16 A Yes, it did.

17 Q And what was that requirement as to these
18 diesels?

19 A There were many requirements but certainly a
20 major requirement is that the machine be capable of generat-
21 ing sufficient electricity to provide the assumed AC power
22 loadings that would be required for the worst accident that
23 the plant could envision. One typically talks about a loss
24 of coolant accident and what would be the attendant loads
25 that would automatically come on to deal with such an event
to protect the reactor coolant pressure boundary, et cetera.

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2 Q Now, the contract specification, in fact,
3 required that the emergency diesel generator units which
4 were procured from Transamerica Delaval be rated at a
5 certain continuous maximum load and overload, didn't they?

6 JUDGE MILLER: Now, if we are going to get into
7 documents we are going to have to have them identified so
8 the record will be complete.

9 BY MR. DYNNER: (Continuing)

10 Q Do you recall whether -- you have testified
11 here that the contract document had a performance spec.
12 Do you recall whether that was the performance requirement?

13 JUDGE MILLER: I think the witness is entitled
14 to see the document alluded to if you are going to have
15 any more questions about it.

16 WITNESS MC CAFFREY: Is there a document available?

17 JUDGE MILLER: I don't know. I'm going to
18 inquire if there are any more questions concerning that.

19 end #7
20 Joe folws

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BY MR. DYNNER: (Continuing)

1 Q Do you recall what the contract specification said as
2 to the rating requirement?

3 A I don't recall sitting here exactly the words
4 that are in the specification for the rating. But I do
5 know that the final safety analysis report specifies certain
6 required loads for the machines.

7 I know that the machines had been tested to an
8 overloading rating, a two hour rating of 3,900 kilowatts,
9 and a maximum continuous load of 3,500 kilowatts.

10 I -- without seeing a specification, I assume
11 numbers like that are in the specification.

12 Q Well, would the FSAR contain the requirement
13 for the performance rating of the diesels that is the same
14 as the contract specification.

15 MR. ROLFE: Judge Miller, Counsel is asking
16 the witness --

17 JUDGE MILLER: Why don't you produce the
18 document. If we are going to have interrogation on documents
19 which are alluded to reasonably in the testimony, the witness
20 should have the opportunity to see them. You will be permitted
21 a certain reasonable amount of interrogation to show what his
22 memory might be on the subject, but I think now if we are
23 going any further we need the document.

24 MR. DYNNER: All right. Judge Miller, I am
25 going to hand the witness, the Board and the parties counsel

1 the copy of the Shoreham nuclear power station Unit 1
2 FSAR dealing with the performance requirement for the
3 emergency diesel generator.

4 JUDGE MILLER: And that will be for identification
5 Exhibit No. 15.

6 MR. DYNNER: Yes, sir. That will be Suffolk
7 County LP Exhibit 15 for identification.

8 JUDGE MILLER: Okay.

XXX INDEX

9 (The above referred to document
10 was marked for identification
11 as Suffolk County Exhibit LP-15.)

12 JUDGE MILLER: Witness will please review it,
13 and you may then proceed with your interrogation.

14 BY MR. DYNNER: (Continuing)

15 Q For the record, the paragraph number of the
16 FSAR --

17 JUDGE MILLER: Is your mike turned on, Mr.
18 McCaffrey, and if so, could you approach it a little more
19 closely.

20 A Yes, is that all right.

21 BY MR. DYNNER: (Continuing)

22 Q For the record, the paragraph number of this
23 FSAR extract is 8.3.1.1.5, entitled, Onsite Standby Power
24 Supply.

25 JUDGE MILLER: Read it first and acquaint yourself

1 with it.

2 Now, is there a pending question of the witness,
3 or --

4 MR. DYNNER: I was going to ask him if he had
5 an opportunity to review the document sufficiently.

6 WITNESS McCAFFREY: Yes.

7 BY MR. DYNNER: (Continuing)

8 Q Now, Mr. McCaffrey, you see where it says that
9 the rating of each diesel generator set is as follows:
10 Continuous 8,760 hours, 3,500 kilowatts.

11 Now, is that the performance rating of each
12 of the emergency diesel generators procured to constitute
13 the onsite electric power system for Shoreham?

14 A Yes.

15 Q And you will see also in the same paragraph
16 it says, Two hours per twenty-four period, 3,900 KW, and
17 then explains the two hour rating in any twenty-four hour
18 period is the rating without reducing the maintenance
19 interval established for the continuous rating.

20 Is that the rating for overload for the emergency
21 diesel generators at Shoreham?

22 A Yes.

23 Q And is that the performance rating that you were
24 referring to that would be necessary to meet the requirements
25 of GDC-17?

1 A No.

2 Q All right. What performance rating requirements
3 would be necessary to meet the requirements of GDC-17, Mr.
4 McCaffrey?

5 A I don't read GDC-17 to require any particular
6 performance rating. What GDC-17 requires from my reading
7 of it is that one provide a means of providing AC power to
8 whatever the required loads would be.

9 The required loads are less than and different
10 than these numbers in the FSAR. These are simply the ratings
11 of the machine, and don't necessarily correlate to the
12 actual required load to protect the criteria that was in
13 GDC-17.

14 Q Well, the procurement of this diesel engine was to
15 a particular rating, wasn't it?

16 A That is correct.

17 Q And this is the rating, wasn't it?

18 A This is the rating, that is correct, but that
19 does not reflect the Company's judgment as to what would
20 be the connected load necessary to support post-LOCA
21 AC power requirements.

22 Q All right. You said in your testimony on page
23 5, the original design of the Shoreham plant included an
24 onsite power source that was intended to meet the requirements
25 of GDC-17.

1 A That is correct. But one has to recognize
2 that when one procures a diesel engine, and we are talking
3 back in the period 1973-1974, one is picking the size of
4 the machine that one hopes certainly in the end will bound
5 the necessary load requirements for the plant, and I think
6 the emphasis of our revisions over the years have shown
7 the plant loads have grown, and this rating has allowed
8 the plant to accommodate those increased loads without
9 changing the rating of the machines.

10 Q Is it your testimony that a lower rated machine
11 would be able to have met the requirements of GDC-17?

12 MR. EARLEY: Objection. Judge, I don't see
13 the relevance of this line. It has gone on, and we are
14 getting into the details.

15 JUDGE MILLER: Well, it is your testimony.
16 It is reasonably related to your testimony on page 5.

17 MR. EARLEY: Let me state my grounds for the
18 objection for the record. The examiner has been going into
19 the details of the diesel generators, and the rating of the
20 diesel generators. The witness has already indicated LILCO
21 intended to comply with GDC-17. The Commission, in its
22 order, instructed LILCO to address the Applicant's good faith
23 efforts.

24 It did not instruct the Applicant to go into
25 all of the details of the licensing of the TDI diesel

1 generators, and whether every decision made was proper.

2 JUDGE MILLER: The questions aren't along
3 those lines. The questions are structured towards sub-
4 paragraph one of Answer 9, on page 5, that the original
5 design included onsite power source intended to meet the
6 requirements.

7 What are the requirements as the witness under-
8 stood them, and he is telling us. We can't say we can't
9 look at it. You can't just put in testimony and then say
10 don't look at the basis of it.

11 The objection is overruled. Proceed.

12 WITNESS McCaffrey: I will need the question
13 restated.

14 BY MR. DYNNER: (Continuing)

15 Q The question, as I recall, Mr. McCaffrey, was
16 is it your testimony that a lower performance rating that
17 specified in the FSAR would meet the requirements of GDC-17?

18 JUDGE MILLER: You are now referring to the
19 original design and to the scope of the answer, I assume.

20 MR. DYNNER: That is correct, Sir.

21 JUDGE MILLER: And your answer may likewise
22 address that particular aspect.

23 BY MR. DYNNER: (Continuing)

24 Q What would be that lower rating, Mr. McCaffrey.

25 A Well, approximately July 3rd or July 4th, Long

1 Island Lighting Company sent in a letter to the Nuclear
2 Regulatory Commission, under my signature, which provided
3 the Company's rationale for why the machine did not need
4 to be tested at the rating levels that are listed here in
5 this reference to the FSAR, and that is the Company made the
6 position that the maximum anticipated conservative main plate
7 loads for the various pieces of equipment, the pumps and
8 motors that would come on, would justify not testing the
9 machines at levels that approach these numbers because those
10 loads are not required.

11 So, while the name plate, per se, was not
12 altered, the Company has made an argument that there is no
13 need to even test the machines at these numbers, and in
14 fact, the numbers that were put in changed this FSAR
15 table to reflect 3,475 kilowatt for the 2,000 hour rating,
16 and the 3,9000 kilowatt number has been altered down to
17 3,500.

18 JUDGE MILLER: When was this done?

19 WITNESS McCaffrey: The date of that letter was
20 approximately July 3rd. It was provided to Suffolk County.

21 MR. DYNNER: 1984, right, Mr. McCaffrey?

22 JUDGE MILLER: July 3rd of what year?

23 WITNESS McCaffrey: 1984. I am sorry.

24 BY MR. DYNNER: (Continuing)

25 Q So, Mr. McCaffrey, that letter that you are

1 referring to of July 1984, was a statement that you intended
2 to attempt to derate the diesels, isn't it?

3 A No.

4 Q Well --

5 JUDGE MILLER: Now wait a minute now. The
6 line of interrogation that we have permitted refers to the
7 original design to meet the on power source intended to
8 meet the requirements of GDC-17, as then understood.

9 July of this year is a wholly different matter.
10 I would rather conclude the examination on that, if we might.

11 MR. DYNNER: Certainly. The point -- precisely
12 the point I was going to make.

13 BY MR. DYNNER: (Continuing)

14 Q The period we are talking about Mr. McCaffrey
15 is what was done by LILCO in the original design of the
16 Shoreham plant intended to meet the requirements of GDC-17,
17 and so I would like you to be responsive to that question
18 rather than to what was done last month.

19 JUDGE MILLER: Have you testified completely
20 as to the basis of that answer that I referred to? I
21 don't want you to repeat. On the other hand, if there
22 are other elements of whatever was done on the original
23 design as to the requirements of GD-17 as then understood --
24 I want you to have a complete record on it, but without
25 repetition. So you may go ahead and answer.

1 WITNESS McCAFFREY: I would like to respond
2 to that. My position is that the machines that were
3 procured, were procured with a name plate rating of
4 these particular numbers, which exceeded conservatively
5 what the anticipated loads would be.

6 I answered talking about the recent letter
7 because I thought counsel was talking about do I still
8 believe that is the case.

9 JUDGE MILLER: I don't know, but we didn't
10 want to get into --

11 WITNESS McCAFFREY: I believe that the
12 specified ratings for the machine bound in the anticipated
13 loads when they were procured.

14 BY MR. DYNNER: (Continuing)

15 Q Mr. McCaffrey, if you will turn to page 6 a
16 minute, on page 6 you elaborate on what you said on page 5,
17 by stating that LILCO's original intent as reflected in
18 Section 8.2 of the Shoreham PSAR was to provide fully
19 qualified diesel generators to comply with GDC-17.

20 A What page are you on?

21 Q That was page 6 of your testimony, sir.

22 Did you mean there, or was that a typographical error, that
23 you meant section 8.3 rather than 8.2?

24 A I don't know without seeing it if it is a
25 typo.

1 MR. DYNNER: Well, without introducing this
2 whole thing into evidence, Judge Miller, with your permission
3 I can just show the witness a copy of the FSAR, Section 8.3,
4 which is entitled, Onsite Power Systems, and ask him whether
5 that is the section that he really meant to refer to in his
6 written testimony.

7 MR. EARLEY: Judge Miller, if I might ask if
8 counsel has 8.2 if the witness could look at that. I think
9 this is something the witness can clear up by looking at
10 it. If it is a typo.

11 MR. DYNNER: Mr. Caruso, I think, has that for
12 you.

13 JUDGE MILLER: I thought that was what he was
14 looking at.

15 WITNESS McCaffrey: No, I don't have 8.2.

16 JUDGE MILLER: We will get it.

17 (Document handed to witness)

18 BY MR. DYNNER: (Continuing)

19 Q Mr. McCaffrey, you take all the time you want,
20 but if I can point out to you and the Board the title of
21 Section 8.2 is Offsite Power System, and the title of
22 Section 8.3 is the Onsite Power System.

23 A That would appear that that is a typo. I should
24 have referred to Section 8.3, but I would note that there
25 is a reference to the fuel generators under the Reg Guide 1.9

1 Section of Section 8.2, but by and large it should have
2 been referenced 8.3.

3 JUDGE MILLER: Let's make the correction then.
4 Do you wish to correct your proffered written testimony,
5 at page 6, little more than half way down, where it reads
6 as follows: LILCO's original intent, as reflected in
7 Section 8.2 of the Shoreham FSAR, close quote; should be
8 corrected to change the Section 8.2 to 8.3, is that correct?

9 WITNESS McCaffrey: That is correct.

10 JUDGE MILLER: It may be so corrected. Thank
11 you.

12 BY MR. DYNNER: (Continuing)

13 Q Now, when you testified, Mr. McCaffrey, that
14 LILCO's original intent is reflected in Section 8.3 of the
15 FEAR was to provide fully qualified diesel generators,
16 Section 8.3 contains the rating requirement that I have handed
17 you in Exhibit Suffolk County LP-15, isn't that correct?

18 A That is correct.

19 Q So I ask you again, sir, is that the performance
20 rating that was intended to provide fully qualified diesels
21 to comply with GDC-17? As reflected in the FSAR, as you
22 have testified.

23 A With regard to the performance rating, that is
24 correct.

25 Q Thank you. Now, Mr. McCaffrey, you have testified,

8-12-Wal

1 I think, that you had no personal involvement in the
2 procurement and in the -- in providing for the specifications
3 of these diesel engines, is that correct?

4 A As the specification was produced in the period
5 1973-74, I would not have been involved. However, my
6 engineering organization, for the periods 1978 into the
7 1981 range, since I was responsible for engineering of the
8 plant as well, and since the Stone & Webster, the architect
9 engineer firm, worked under my overall management and
10 control, that engineering organization would have dealt
11 with any matters dealing with the TDI machines.

12 Q So it is true that you had no personal involvement
13 in the -- in writing this specification or in procuring the
14 diesel engines from Delaval, but you have some second hand
15 knowledge about that, is that right?

16 JUDGE MILLER: Perhaps second hand might be a
17 little pejorative in this context.

18 MR. DYNNER: I don't mean it pejorative, sir,
19 at all.

20 BY MR. DYNNER: (Continuing)

21 Q Perhaps you could describe what the basis is
22 for your testimony concerning the specification as reflected
23 in Section 8.3 of the FSAR, being intended to provide for
24 compliance with GDC-17.

25 A Over the years I have read the specification.

1 I was responsible for the specification through
2 my engineering organization, and in my job as manager of
3 licensing and various capacities over the years, it has
4 always been my responsibility as part of the corporation
5 to be aware of the Company's commitments, and how we were
6 implementing those commitments.

7 So, therefore, I have read the specifications.
8 I have read the pre-operational test program results. I
9 have personally spoken with startup managers, plant managers,
10 and all the people who had a first hand knowledge of all
11 these matters.

12 So, I don't consider that second hand at all.

13 JUDGE MILLER: I just don't want any second
14 hand here.

15 BY MR. DYNNER: (Continuing)

16 Q Now, Mr. McCaffrey, you understand, we are talking
17 about the period of LILCO's original intent here now. We
18 are talking about 1973-1974, when they were procuring the
19 diesel engines, and does your answer stand with respect to
20 that period of time, and your knowledge and basis for your
21 testimony about that period of time.

22 A From my reading of the preliminary safety
23 analysis report, I believe it was the Company's intent to
24 deliver such a machine, and certainly since the Company
25 produced a specification in the 1973 time frame, that is the

1 basis for why I believe we intended to do it, or else we
2 wouldn't have bought it.

End 8. 3
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Sim 9-1

1 Q Now, Mr. McCaffrey, when you, and I mean LILCO,
2 was in the process of procuring these diesel engines from
3 Transamerica Delaval, what did LILCO do to ensure that those
4 engines would meet this performance rating? And we are
5 talking in the time frame of when the engines were being
6 procured now. We are not talking about today.

7 A The company did what it does for any equipment
8 which is procured, and that is, one, utilizes the resources
9 of the company's quality assurance organization, the
10 quality assurance programs and the quality assurance
11 organization and programs of the architect/engineer which
12 is kind of a building block approach of quality programs
13 upon quality programs which oversees the manufacturer's
14 quality programs.

15 Those programs require certain documentation,
16 certain inspections, certain examinations and periodic
17 inspections by those organizations to provide the assurance
18 that the equipment is being delivered in conformance with
19 those prescribed programs.

20 Q All right. Now let's get specific, Mr. McCaffrey.
21 What specifically did LILCO do to assure that the diesel
22 engines that were being manufactured by Transamerica Delaval
23 were capable of a performance rating of over 8,000 hours
24 of continuous performance at 3500 KW, if you know?

25 A Well, I certainly don't personally know all

Sim 9-2

1 of the elements of what the company did. What I do know
2 is the company implemented its QA program which oversaw
3 that operation.

4 I know that the machines were run at the
5 Transamerica Delaval factory for an extended period of time
6 to assure their operability in conformance to these
7 requirements.

8 There were physical inspections by agents of
9 Long Island Lighting Company during that process. Those
10 would be elements of the basis.

11 Q All right. How many inspections did LILCO or
12 its agents carry out of Transamerica Delaval to make sure
13 that the rating of these engines was proper?

14 MR. EARLEY: Objection, Judge. I think we are
15 getting far afield going into the details of how many
16 inspections. The witness has testified that the company
17 applied their normal quality assurance program.

18 JUDGE MILLER: Well, the witness doesn't have
19 personal knowledge is the problem, you see. If he doesn't
20 know, that is a perfectly clear answer. If he knows and
21 it is based on whatever it is, he is telling us. So I
22 think he is covering it.

23 Go ahead.

24 THE WITNESS: Your Honor, all I can testify
25 is that the company implemented its programs in accordance

Sim 9-3

1 with the commitments with our architect/engineer.

2 JUDGE MILLER: Well, that is your conclusion.
3 How do you know that of your own knowledge now and that
4 will include anything you may have read in the company's
5 files. But how do you really know that?

6 THE WITNESS: One indication of knowing that is
7 that the entire quality assurance program came under 52 days
8 of litigation before another Board.

9 JUDGE MILLER: Well, we have enough trouble
10 with one Board.

11 THE WITNESS: What I am trying to do is put in
12 perspective how the programs were implemented.

13 JUDGE MILLER: I need to know rather precisely
14 how you know, either of your own personal knowledge or
15 documents upon which you feel you should be entitled to
16 rely in your company's recordkeeping. If you don't know,
17 say so. If you know because of certain things, tell me, and
18 then let's get on with it. And we are not requiring that
19 you should. I am not impugning your testimony because you
20 don't have personal knowledge at the time you weren't there.
21 But I just want to pick up what we have and go with what
22 we have.

23 THE WITNESS: I certainly don't have details
24 of how many inspections or who was there, whatever. What
25 I do know is that I am responsible for the TDI litigation

Sim 9-4

1 effort which will take place in another court and the staff
2 that is preparing for that litigation, all the consultants,
3 all the technical resources, and FAA and TDI are all ---

4 JUDGE MILLER: In 1974?

5 THE WITNESS: --- are all consultants to that
6 effort which I oversee.

7 JUDGE MILLER: In 1974?

8 THE WITNESS: It goes back ---

9 JUDGE MILLER: I am going back to your testimony.
10 Now that was in the beginning. Good faith efforts in the
11 beginning of the GDC 17, as then understood, and I under-
12 stand there may be some changes, the original intent as
13 reflected in 8.3. Now that is what I am talking about.
14 If you don't know, just say so. If you are going to tell
15 me that a lot of other people know, give me their names.
16 You realize you are opening up -- your counsel may have
17 to get out a lot of subpoenas, but tell me what it is you
18 are basing it on.

19 THE WITNESS: I have simply been advised by
20 the people that I work with that that program was implemented
21 and the details on it I don't have.

22 JUDGE MILLER: They didn't tell you the details
23 and you haven't read any of the details such as the number
24 of inspections I suppose. If you have, tell us, and if
25 you haven't, say you don't know and let's go on.

Sim 9-5

1 THE WITNESS: In the course of preparing for
2 TDI litigation I have had occasion to read inspection
3 reports, which I don't recall the dates of. I can recall
4 reading NRC inspection reports. To prepare for litigation
5 one has to be aware of the entire background.

6 JUDGE MILLER: I don't care what purpose. What
7 did you look at that would show in any way or bear upon
8 the number of inspections that were made or whatever the
9 question was?

10 THE WITNESS: I have read inspection reports
11 by Stone and Webster and Long Island Lighting Company of
12 the Transamerica DeLaval facility.

13 BY MR. DYNNER:

14 Q Well, Mr. McCaffrey, you are aware, aren't you,
15 that the NRC Region IV never did a vendor inspection of
16 TDI until 1979; isn't that true?

17 A I am aware of an NRC investigation in the TDI.
18 I can't personally attest to that statement.

19 JUDGE MILLER: Well, now wait a minute. 1979
20 is a date that is different from that which your testimony
21 talks about, the original intent. Please select whatever
22 time frame you want on the original intent and let's get
23 our dates to where we are going to talk about.

24 Once again, if you don't know, say so. I think
25 that you feel you are under more of a burden, perhaps,

Sim 9-6

1 than you are as a witness.

2 THE WITNESS: I thought the question inquired
3 as to this NRC report, and my understanding of this report
4 that counsel is referring to is that it is a fairly recent
5 report.

6 JUDGE MILLER: Well, the question is if the
7 report that is being discussed is 1979, that is not some-
8 thing that would have been contemporaneous with the time
9 that you read whatever report you said you read from which
10 you arrived at an opinion as to original intent.

11 Now, I don't want to belabor this thing, but
12 we are going to have to have a meeting of minds.

13 MR. EARLEY: Judge Miller, to clarify things,
14 it might be helpful if counsel for the county has a specific
15 report in mind. I believe counsel for the county referred
16 to an NRC report, and Mr. McCaffrey I believe, and the
17 record will reflect what he said, referred to LILCO and
18 Stone and Webster inspection reports.

19 JUDGE MILLER: I don't care about the names
20 of them. What I care about is the date. Original is
21 original. I don't want to go back to the Garden of Eden,
22 but I jolly well don't want this record full of a lot of
23 things. It was '79 or '81 or another hearing.

24 Now we should be able either to find out what
25 the witness knows or documents he is aware of which bear

Sim 9-7

1 upon the original intent, and that has been defined, as
2 I recall it, back in 1973, wasn't it, when the procurement
3 documents went out.

4 THE WITNESS: The best way to answer that is
5 the specifications specified it, the PSAR specified it
6 and there were inspections ---

7 JUDGE MILLER: As of those dates?

8 THE WITNESS: As of those dates, and that there
9 were inspections conducted during the period of fabrication
10 and testing which I have had occasion to look at.

11 JUDGE MILLER: Okay. And what dates were those
12 records covered?

13 THE WITNESS: I don't recall the date of the
14 document ---

15 JUDGE MILLER: Approximately.

16 THE WITNESS: --- but this would have been in the
17 period of '75 maybe time frame, when the machines were
18 in testing. I don't recall the exact time frame when
19 they were in testing.

20 JUDGE MILLER: All right. Now let's go from
21 there. If you really don't know it, that is all right.
22 If you can help us by identifying a document, fine. We will
23 try to move now a little more swiftly.

24 BY MR. DYNNER:

25 Q Mr. McCaffrey, just to clarify, the documents

Sim 9-8

1 you were talking about were inspections of the quality
2 assurance program; is that what you said?

3 A That is correct.

4 Q Now I am not talking about the quality assurance
5 program, and I apologize for having perhaps confused you.
6 I am asking whether in fact LILCO determined how Delaval
7 rated this diesel engine to be able to perform at 3500 KW
8 for over 8700 hours? Do you know how they did that?

9 MR. EARLEY: Objection, Judge. I don't see how
10 that is relevant, how the vendor determined whether they
11 were going to meet the performance specifications.

12 JUDGE MILLER: Well, how do you intend to show
13 the bases for the testimony, the conclusory testimony of
14 LILCO's good faith efforts bearing upon the original design
15 intended to meet the requirements of GDC 17? That is just
16 a big, fat conclusion. Either you are going to permit
17 cross-examination or you are going to have to withdraw
18 it. You can't do a little of both.

19 MR. EARLEY: Judge Miller, I think that testimony
20 has already been provided by the witness. The witness
21 has testified that he has personally reviewed the performance
22 specifications and the ---

23 JUDGE MILLER: Counsel, this is cross-examination.
24 It doesn't have to satisfy you or me. Counsel is entitled
25 to a reasonable attitude. I have already suggested that

Sim 9-9

1 we are spending entirely too much time, but I can't seem
2 to get the documents, the basis for that conclusion and the
3 witness to address it. He can address it in whatever way
4 he wants.

5 Your objection is overruled.

6 Do you recall the question now?

7 THE WITNESS: No. I need the question.

8 JUDGE MILLER: Rephrase it.

9 BY MR. DYNNER:

10 Q Let me rephrase it. I am going to say a few
11 things which I think are what you have said so far, and if
12 I say something wrong, Mr. McCaffrey, you stop me.

13 You have specifically testified that LILCO's
14 original intent as reflected in Section 8.3 of the Shoreham
15 FSAR was to provide fully qualified diesel generators to
16 comply with GDC 17.

17 We then looked at Section 8.3 and we found out
18 there is performance rating, and that performance rating
19 is that the machine has to be capable of operating for
20 8700 hours at 3500 KW.

21 My question is what good faith effort did LILCO
22 make to ensure that Delaval was producing a machine capable
23 of operating for 8700 hours at 3500 KW?

24 A There are two things the company did. One, by
25 providing a specification which called for certain

Sim 9-10

1 performance standards and, two, by assuring through a
2 pre-operational test program that the machines were capable
3 of running at these numbers. The pre-operational test
4 program that had been run in the past showed the machines
5 are capable of running at those numbers and that is the
6 basis.

7 Q I am talking about 1973-74. When was the
8 pre-operational test program now that you are talking about
9 performed?

10 A To provide assurances of compliance with GDC 17
11 not only does one have to specify it in the purchase period
12 of '73-'74, but then one has to demonstrate it in the
13 installed plant which by definition can't be in the period
14 of '73-'74.

15 Q Now, Mr. McCaffrey, I am asking you I think
16 a simple question. I am not asking you what LILCO did
17 four years or five years later to test the engine. I am
18 asking you what did LILCO do when Delaval was constructing
19 these engines to ensure that Delaval was giving you an
20 engine capable of operating for 8700 hours at 3500 KW?
21 And so far you have told me they provided the specification.

22 A Well, I have added to that. I said also that
23 LILCO implemented the quality assurance program and there-
24 fore through the architect/engineer there is a QA and QC
25 organization. The QC organization goes out and periodically

Sim 9-11

1 visits the manufacturing site to observe the status of
2 manufacture. LILCO sent people out to observe the testing
3 of those machines at Delaval before they were shipped. As
4 with any specification or any quality program, one has to
5 sign off certain quality records which demonstrate that
6 all the facets of the specification have been met and the
7 performance standards have been met before the equipment
8 is released to be installed.

9 JUDGE MILLER: Who signed off?

10 THE WITNESS: This would have been signed off by
11 our agent, Stone and Webster.

12 BY MR. DYNNER:

13 Q All right. And did you know or make an attempt
14 to find out how many hours Delaval tested these engines
15 to see whether they could perform for 8700 hours?

16 A I don't know.

17 Q You don't know whether you made that effort,
18 or you don't know how many hours it was tested?

19 A I didn't look into it and I don't know.

20 Q You don't know whether the effort was made?

21 A Are you talking about in preparation for this
22 here?

23 Q You don't know whether the effort was made to
24 determine how many hours Delaval tested the engine? Is
25 that your testimony, that you don't know?

Sim 9-12

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A For what period of time?

Q While it was being constructed before it was delivered.

A While it was being constructed certainly the QA/QC organizations would have made such an effort and so did LILCO.

Q And do you know how many hours it was tested by Delaval in order to see whether it could run at 8700 hours at full power?

A I don't know.

Q Have you found out since in connection ---

JUDGE MILLER: I think he has answered he doesn't know, counsel. That is the state of it.

BY MR. DYNNER:

Q All right. Now, Mr. McCaffrey, you testified on page 9 of your testimony, if you want to look at that, sir, that the crankshaft on diesel generator 102 failed. When did that occur, sir?

A In August of 1983.

Q In August of '83. And did LILCO do anything to determine what the cause of that failure was?

A Yes.

Q What did it do?

A As my testimony supports, LILCO went out and brought in a consultant to work. The Failure Analysis

Sim 9-13

1 Associates, which is a renound firm in the area of material
2 properties, was brought in within a couple of days of the
3 event. They were on site and they conducted examinations
4 of the failed crankshaft. They subsequently were asked to
5 do various analytical examinations on the crankshaft. They
6 did torsional testing of another similar crankshaft on the
7 adjoining machine for purposes of obtaining torsional
8 properties of the machine under load. All that background
9 information and inspections during that teardown were brought
10 to bear upon the cause.

11 FAA finally produced a final report which was
12 submitted to the Nuclear Regulatory Commission attesting to
13 the analysis of the cause of the failure and further
14 demonstrating why the replaced crankshafts should survive
15 their intended service.

16 Q And what was that cause, Mr. McCaffrey?

17 A I don't have the report in front of me. My
18 recollection is torsional fatigue.

19 Q And they concluded that the crankshaft design
20 was definitely inadequate, didn't they?

21 A Yes.

22 Q Now, Mr. McCaffrey, going back to the time
23 prior to the delivery of these diesel engines, how did
24 LILCO use its best efforts to determine whether or not the
25 crankshafts in these engines were adequately designed?

Sim 9-14 1

2 A I don't personally know. What I can say is that
3 any quality program goes in and inspects various facets
4 of a manufacturer's operation and one wouldn't necessarily
5 expect that the quality inspection would pick up such
6 an obscure facet of torsional fatigue in the crankshaft.

7 Q Did LILCO's attempts to ensure that these diesel
8 engines would meet the requirements of GDC 17 include a
9 review of the design of the crankshafts?

10 A I don't know.

11 Q So you don't know whether that was part of your
12 best efforts?

13 JUDGE MILLER: He has already testified he
14 doesn't know. If he doesn't know, he doesn't know. Don't
15 argue with the witness.

16 MR. DYNNER: Yes, sir.

17 BY MR. DYNNER:

18 Q What did LILCO do in its best efforts after
19 the diesel engines were delivered to determine whether or
20 not the crankshaft's design was adequate or not?

21 A Following the delivery of the machine, there
22 would have been no basis for questioning the adequacy
23 of the crankshaft. The machines were delivered, were
24 placed in controlled storage on the site and awaited
25 completion of the physical plant before their subsequent
installation and testing in the plant.

Sim 9-15

1 Q When the crankshaft on diesel 102 failed you
2 stated here that that was during the test; is that correct?

3 A That is correct. The company had essentially
4 completed the pre-operational test program with three
5 machines and in the final stages of testing on the machine
6 there was the failure of the crankshaft.

7 Q Was that an overload test at 3900 KW,
8 Mr. McCaffrey?

9 A I am not sure what load it was at at the point
10 of failure.

11 (Pause.)

12 MR. DYNNER: Judge Miller, I would like to
13 distribute and have marked for identification as Suffolk
14 County Low-Power Exhibit 16 a letter from Region I of the
15 NRC, signed by Mr. Allan, to Mr. Pollock of the Long Island
16 Lighting Company with its attachment showing notice of
17 violation and proposed imposition of civil penalty and
18 ask the witness to take your time and look this document
19 over and I would like to ask you a question about it.

20 JUDGE MILLER: It will be so marked.

21 (The document referred to
22 was marked Suffolk County
23 Exhibit LP-16 for identification.)

24 JUDGE MILLER: Is there any particular portions
25 of these documents that you wish the witness to look at

INDEX

Sim 9-16 1

a little more carefully?

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(Pause.)

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2 MR. DYNNER: Yes. I think the notice of
3 violation and proposed imposition of civil penalty which
4 is attached to this letter.

5 (The witness is looking at documents.)

6 JUDGE MILLER: I think we will take our lunch
7 recess a little early. You will have the opportunity to
8 study this as carefully as you like, the documents.

9 If there are any other documents that you are
10 going to be giving the witness -- I realize you may sacrifice
11 a little surprise, but it might be efficient if you let
12 him have them over the recess.

13 We will stand in recess until 1:30.

14 (Whereupon, the hearing is recessed at 11:42 p.m.,
15 to reconvene at 1:30 p.m., this same date.)
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#10-2-SudT

A F T E R N O O N S E S S I O N

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(1:30 p.m.)

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JUDGE MILLER: All right. Mr. McCaffrey, have you read Suffolk, for identification, LP-16?

5

WITNESS MC CAFFREY: Yes, I have.

6

JUDGE MILLER: All right. Next question.

7

Whereupon,

8

BRIAN R. MC CAFFREY

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resumed the stand as a witness by and on behalf of Long Island Lighting Company and, having previously been duly sworn, was further examined and testified as follows:

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CROSS EXAMINATION

13

BY MR. DYNNER:

14

Q Mr. McCaffrey, this document refers to a pre-operational test for Diesel 102 on May 26th, 1982 in which the diesel engine during the overload test was supposed to be run at 3900 KW and it was recorded at 3850 KW.

15

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18

And it was a notice of violation in that respect, which you have in front of you; is that correct?

19

20

MR. EARLEY: Judge Miller, I'm going to object to this line of questioning on the grounds of relevance. This witness' testimony goes to LILCO's good faith efforts.

21

22

23

He has not claimed, or made any statement, that LILCO's QA program or efforts have been perfect. And I think the Board can take notice that the NRC routinely inspects

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#10-3-SueT

2 utilities and has findings against utilities, and I don't
3 think it furthers this proceeding to go into individual
4 findings that the NRC has made over the course of its
5 inspections of Shoreham.

6 Also, the matter of quality assurance at Shoreham
7 has been dealt with with another licensing board in detail
8 and, in fact, this particular document formed the basis of
9 a County effort to have the record on quality assurance re-
10 opened, and that effort was denied by the licensing board
11 headed by Judge Brenner.

12 JUDGE MILLER: Well, we are not interested in
13 going to any other Board's proceedings or issues.

14 What is the relevance or materiality -- it may
15 well be relevant -- to this more limited proceeding?

16 MR. DYNNER: Yes, sir. The relevance of this is
17 that Mr. McCaffrey on Page 8 testifies as to the diesel
18 generator pre-operational test program in order to demonstrate,
19 as he is attempting to do in his testimony, the good faith
20 efforts.

21 The particular relevance of this test is that it
22 was an overload test run on the exact diesel engine which
23 approximately eight months later had its crankshaft broken
24 when it was properly run at an overload of 3900 KW, and
25 the purpose is to inquire of the witness whether in his
testimony the failure of LILCO to properly test the diesel

#10-4-SueTj

2 engine 102 at full overload of 3900 KW represents in his
3 testimony a part of the good faith effort of LILCO to
4 assure--assure, that these engines would be capable of
cooling the core in a postulated accident.

5 JUDGE MILLER: Well, how would it make any
6 difference in this proceeding or any other proceeding now?

7 How is it proceeding-specific?

8 MR. DYNNER: It's proceeding-specific in that it
9 is a line of inquiry directly relevant to the prefiled
10 testimony of this witness who, he say, on Page 7 in answer
11 to the question, Question 11, sir: Will you please explain
12 LILCO's efforts to ensure that the TDI diesel generators
13 will operate reliably and thereby meet GDC-17?

14 And as part of the answer, he goes on and talks
15 about --

16 JUDGE MILLER: Prior to and following crankshaft
17 failure.

18 MR. DYNNER: And then he goes on to talk about
19 the building block approach of the pre-operational test
20 program, at the top of Page 8. LILCO subjected them to a
21 pre-operational test program. Then, he goes on to describe
22 that.

23 And what I'm trying to inquire is as to a
24 particular facet of that pre-operational test program that
25 the witness is saying is part of LILCO's efforts to ensure

#10-5-SueT

2 that they operated reliably and thereby were in good
3 faith.

4 JUDGE MILLER: Well, suppose that their testing
5 had been somewhat less than maximum, in your view, would
6 that necessarily show a lack of good faith effort to
7 comply?

8 MR. DYNNER: No, sir.

9 JUDGE MILLER: Why couldn't you have good faith
10 efforts that were not of maximum efficacy?

11 MR. DYNNER: The particular relevance -- I quite
12 agree, that one can expect that a testing program wouldn't
13 be carried on perfectly --

14 JUDGE MILLER: In other words, I don't want --

15 MR. DYNNER: It could be good faith and sloppy.
16 What we are trying to show here is that this was -- this
17 particular case was so egregious, was such a --

18 JUDGE MILLER: That's the key. Egregiousness
19 is the key. Now, we are going to let you go on that theory,
20 not too long, and it should be to that aspect, not simply
21 no one is perfect and no company --

22 MR. DYNNER: Exactly. I will limit myself to a
23 few questions.

24 JUDGE MILLER: Limiting it to that, we will
25 overrule the objection.

BY MR. DYNNER: (Continuing)

#10-6-SueT 1

2 Q Now, Mr. McCaffrey, turning once more to this
3 notice of violation, is it correct that it refers to what
4 was supposed to be a test run on May 26th, 1982 at 3900 KW
5 on an EDG, that is emergency diesel generator, 102?

6 A Yes.

7 Q And is that the same emergency diesel generator
8 which suffered a crankshaft breaking in two in August of
9 1983?

10 A Yes.

11 Q So that is it your testimony that it was a part
12 of the good faith effort of LILCO, and that there is demon-
13 stration of good faith, is that there was a failure to
14 fully test at 3900 KW this particular diesel with this crank-
15 shaft that later severed?

16 A First, I would like to say I don't couple in
17 my mind the crankshaft failure with the events prompting
18 the notice of violation. I think those are mutually ex-
19 clusive issues.

20 But speaking to the pre-operational test itself
21 and the notice of violation, from my recollection of the
22 circumstances, at that time the issue was that a particular
23 regulatory guide called for testing the machine to a certain
24 level.

25 The test engineers had made a certain interpretation
of that regulatory guide as it relates to the load swings

#10-7-SuqT

2 versus, let's say, the average load over the period of time.
3 As this inspection report indicates, that final test data
4 and documentation had not gone through the last two required
5 steps in LILCO's overall management QA program, that being
6 the operating OQA organization review and the review of
7 operations committee, which the plant management group
8 review. So, it hadn't got to those steps.

9 Nonetheless, there was a difference of interpreta-
10 tion between the Long Island Lighting Company and the NRC
11 inspectors. Our position was indicated in letters which
12 were sent to the Staff, one of which is referenced here,
13 which is -- there was a March 16th response by the Lighting
14 Company to the Staff. And then there were subsequently two
15 additional letters, May 12th, 1984, again presenting the
16 Company's view.

17 So, I think the point is there was a difference
18 of viewpoint. We don't deny that some of the test data that
19 was taken had lower than 3900 kilowatt numbers associated
20 with them.

21 Q Well, my question was, Mr. McCaffrey, has nothing
22 to do with quality assurance. I'm not talking about quality
23 assurance.

24 It's true, isn't it, that the test was not run
25 the full period at 3900 KW and that's what this violation
refers to, doesn't it?

#10-8-SueT

A That's what the violation says.

2 Q All right. Now, in your opinion, if the test
3 had been run properly at 3900 KW would the crankshaft
4 deficiency have been more likely to have been discovered?

5 A I don't know.

6 Q Mr. McCaffrey, I would like to very, very quickly
7 lay a little background here in your testimony, on the top
8 of Page 8. On Page 7, you refer to the purchase -- I'm
9 sorry. I must ask you to forgive me and start at the
10 bottom of Page 7.

11 At the bottom of Page 7, you refer to the fact
12 that LILCO purchased the three diesel generators from
13 Delaval. Now, when did that purchase take place approxi-
14 mately?

15 A 1973 time frame.

16 Q All right. Now, if you will turn the page to
17 the top of Page 8 where you refer to the fact that once
18 the diesels arrived on site, when did they arrive on site?

19 Approximately?

20 A Oh, I would say 1975, '76 time frame.

21 Q And when were they installed in the plant?

22 A I'm not certain. It was a period of time after
23 that time. I know they were in storage on site. I saw
24 them in storage on site. I would imagine it could have been
25 a couple of years after that.

#10-9-SueT 1

Q A couple of years in storage?

2

A Could be.

3

Q And when did LILCO begin to subject them to

4

the pre-operational test program that you referred to on

5

Page 8?

6

A In rough time frame again?

7

Q Yes. If you know a specific time, you can

8

certainly give it.

9

A Oh, probably in the late '78-'79 time frame.

10

Q Now, you testified that the crankshaft on diesel

11

102, which is your next sentence, broke. And I think before

12

you testified it broke in August of 1983; is that correct?

13

A Yes. It broke in August of '83. I would like

14

to go back to a question that was asked earlier. I'm not

15

sure I answered it correctly.

16

It was the question as to the pre-operational

17

testing. Was the question when the test program was

18

initiated or when it was conducted?

19

Q I asked you when the pre-operational test program

20

you referred to began.

21

A Then, my answer is right.

22

Q Thank you. Now, Mr. McCaffrey, did LILCO ever

23

use its best efforts to determine whether or not the crank-

24

shaft of the design that broke had been installed in any

25

other engines by Delaval of exactly the same model as the

#10-10-SueT

diesel generators, namely the DSR-48 engine?

2 A For which period are you inquiring as to
3 whether we --

4 Q Prior to the time the crankshaft broke.

5 A I know of no reason that one would have had to
6 question the adequacy of the crankshaft prior to the failure.
7 When that failure occurred, we were quite surprised.

8 Q Did LILCO's agents, Stone and Webster Engineering
9 Corporation, ever have any discussion or correspondence
10 with Delaval regarding the design of the crankshaft in the
11 engines?

12 A I don't know.

13 Q Did Delaval ever tell LILCO that the crankshafts
14 in these engines had been found to be unqualified for this
15 engine by the American Bureau of Shipping?

16 A Did TDI ever tell Stone and Webster?

17 Q Or LILCO or anybody else that you know?

18 A I'm not certain. There have been recent discus-
19 sions in connection with the TDI litigation case having to
20 do with certain statements of qualification of the crank-
21 shafts to ABS standards. I'm aware of a documentation to
22 the revised crankshafts that have been put in the rebuilt
23 machines.

24 I'm not aware of documents relating to ABS assess-
25 ments on the original crankshafts that failed.

#10-11-SueT 1 Q Now, I'm going to try to rephrase my question
2 to make it more clear to you, Mr. McCaffrey.

3 Prior to the time the crankshafts broke, did
4 Delaval ever tell LILCO or any of its agents or contractors
5 or representatives that this crankshaft of the type that
6 broke --

7 MR. EARLEY: Objection.

8 MR. DYNNER: May I finish the question? Then,
9 you can object, Mr. Earley.

10 MR. EARLEY: I'm sorry.

11 BY MR. DYNNER: (Continuing)

12 Q Let me start the question over, please. Prior
13 to the time the crankshaft broke, did Delaval ever tell
14 LILCO or its agents, to your knowledge, that the crankshaft
15 of the type that broke had been found by the American Bureau
16 of Shipping to be too small and not qualified for use in
17 this engine model?

18 A I don't know.

19 JUDGE MILLER: Wait. Hold the answer.
20 Did you have an objection?

21 MR. EARLEY: Yes, Judge. My objection is that
22 counsel for the County has not laid any foundation that
23 ABS provided any information to TDI that --

24 JUDGE MILLER: You are confusing direct and
25 cross. You don't have to lay a foundation in cross. You

#10-12-SudT

2 can shoot from the hip, helter-skelter. You are thinking
of direct, I think.

3 MR. EARLEY: Well, Judge, I think --

4 JUDGE MILLER: Unless the witness is being
5 confused. Now, the witness can readily tell us that, can
6 tell us whether he is recognizing the basis of the inquiry
7 or not. You can soon tell whether he has any information.

8 Do you remember the question?

9 WITNESS MC CAFFREY: Yes, I do.

10 JUDGE MILLER: Do you know the purport of it,
11 the scope of it?

12 WITNESS MC CAFFREY: I think I generally under-
13 stand it.

14 JUDGE MILLER: Okay. Can you answer it?

15 WITNESS MC CAFFREY: The answer is, I don't
16 know.

17 JUDGE MILLER: Okay.

18 BY MR. DYNNER: (Continuing)

19 Q All right. Mr. McCaffrey, do you know whether
20 Delaval, prior to the time the crankshaft broke, ever told
21 LILCO or any of its agents that a new, larger size crank-
22 shaft was available for use in the engines of the same
23 models as the diesels at Shoreham?

24 JUDGE MILLER: Now, hold it a minute. Do you
25 intend to follow up?

#10-13-SueT

MR. DYNNER: Yes, sir.

2 JUDGE MILLER: Okay. You may answer it.

3 WITNESS MC CAFFREY: I don't know if LILCO or
4 any of its agents were provided with information prior to
5 the failure that there was a replacement crankshaft.

6 BY MR. DYNNER: (Continuing)

7 Q All right.

8 A We certainly found that out afterwards. But
9 that was only upon looking into the failure and trying
10 to assess what happened.

11 Q You have answered my follow-up question without
12 me asking it. Thank you, Mr. McCaffrey.

13 Did you also determine after the crankshaft broke
14 that the American Bureau of Shipping had found this crank-
15 shaft to be unqualified for use in the same model engine on
16 ships?

17 A The replacement crankshaft now?

18 Q No. The original size crankshaft.

19 A I don't know.

20 Q You don't know? Thank you.

21 Mr. McCaffrey, I'm going to move on now to ask
22 you to, if you can, briefly explain whether any problems
23 concerning the Delaval engines at Shoreham surfaced between
24 the time that the pre-operational tests began in 1978-'79
25 and the time that the crankshaft on diesel engine 102 broke?

#10-14-SueT

A Yes.

2 Q Could you briefly describe those problems?
3 And I might state, in order to help you refresh your
4 recollection --

5 MR. DYNNER: And this may be the appropriate time,
6 Judge Miller, during the break I supplied to Mr. McCaffrey
7 and his counsel copies of an NRC Region I, Inspection Number
8 50-322/8307, dated March 24, 1983, so that they could look
9 at it over the lunch break.

10 I would like to make copies of this available
11 to the Board and parties and mark it for identification,
12 Suffolk County LP-17, I believe.

13 JUDGE MILLER: Very well.

INDEXXX 14

(The document referred to is
15 marked Suffolk County LP-17
16 for identification.)

end #10 17

Joe flws 18

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25

BY MR. DYNNER: (Continuing)

1 Q In responding to my question, please feel free
2 to refer to the document, and for the Board and other
3 parties reference, I will specifically direct you to pages
4 6, 7, and the beginning of page 8, of the Inspection Report
5 83-07.

6 A As I said at the outset, when one goes to deliver
7 a diesel system, one specifies it initially, one procures
8 it to approved manufacturers, one implements quality programs
9 to ensure the product delivered meets the spec.

10 The final test is the preoperational test
11 program. This is the shakedown phase. This is when the
12 bugs are supposed to come out, and this is one when one
13 affirms that the unit should be satisfactory for meeting
14 its intended purpose per the FSAR.

15 What the Company found in the pre-operational
16 test program was a number of problems. That was the purpose
17 of the pre-op program. What we have here in this inspection
18 report is some discussion on some of the difficulties that
19 came up during the pre-operational test program.

20 Page 7 lists LILCO Deficiency Reports, LDRS.
21 The LDRs are a document that came out of the LILCO quality
22 assurance program, specifically the OQA program, Operating
23 Quality Assurance, which document a particular deficiency.
24 Ensure that proper mechanical or engineering expertise is
25 brought to bear to resolve it.

1 So, you have your compilation of the types of
2 things that the Company was dealing with.

3 This was in the time frame of March 1983. The
4 Company recognized there were a number of problems that had
5 been encountered in the shakedown phase, and the Company
6 instituted in March of '83 a detailed operability review
7 program, as my testimony refers to , which was the subject
8 of an NRC review meeting June 30, 1983, which summarized
9 the basis for why LILCO believed that all these problems
10 in the past, some of which are enumerated here, have been
11 resolved and the machines were ready for acceptable service,
12 and that was approximately June of '83.

13 Q Now, Mr. McCaffrey, my question to you if you
14 will recall prior to your statement was can you identify
15 some of the problems which arose in the period between the
16 beginning of pre-operational testing, and the time the
17 crankshaft broke. Could you please answer that question.

18 A I think page 7 here lists some of those
19 difficulties.

20 Q Yes. Were there any others besides those that
21 are handily listed on page 7 of this I&E report?

22 A Not that specifically come to mind.

23 Q Well, over here -- what does an occurrence mean,
24 Mr. McCaffrey? This page 7 doesn't really tell you what went
25 wrong. It just says these are occurrences.

1 A That is right. This Table doesn't allow one
2 to determine, for instance, in engine turbo charger area
3 what specifically came up during the pre-operational
4 testing.

5 Q And that is why I am asking for your testimony
6 as to what you recall went wrong. You testified now on
7 page 9 that the test program identified problem areas that
8 needed correction. I am asking you can you please help us
9 out by telling us what were some of the specific problems
10 that you recall when you wrote this testimony, what you
11 had in mind here.

12 A I had in mind issues like engine vibration, which
13 came up as is listed on page 6, of which I was personally
14 familiar with. I can relate to jacket water pumps, and
15 turbo chargers, and issues like that, because in the
16 course of my licensing functions, I would have routinely
17 been talking to people like the startup manager, and would
18 have been aware of these in the period of -- we are talking
19 1983 here, in the capacity as my ISEG, -- Chairman of the
20 Independent Safety Engineering Group -- I would have had
21 occasion for my engineers to be discussing many, many
22 types of mechanical problems or operations problems that
23 came up in the normal course of implementing the pre-operational
24 program.

25 Q Did you know that three out of the twenty-four

1 cylinder heads in the engines cracked and leaked water into
2 the cylinders, for example?

3 A I know that cylinder heads cracked and leaked
4 water in, and the company implemented a borrowing over
5 procedure, plus changing out the heads.

6 Q Now, is it your testimony, Mr. McCaffrey, that
7 all of these problem areas which occurred between the time
8 that pre-operational testing began and the time the crankshaft
9 broke in August of 1983, were normal for the shakedown
10 process?

11 A My judgment would be that the number of items
12 that came up probably were on the high side of what would
13 be expected.

14 Q All right. And when you read -- you did read
15 this report when it came out in March of '83, didn't you,
16 Mr. McCaffrey?

17 A Yes.

18 Q And when you read that on page 6 of this report,
19 that one of the concerns was the reliability for continuous
20 operation and for standby electric power is questionable
21 at this point, in March of 1983, did you become concerned?

22 A I would say the Company certainly recognized
23 that concern, and that is why we implemented the diesel
24 operability review program in March of '83, which was aimed
25 at addressing the entire history of problems that arose in

1 prior testing.

2 Q And when the -- are you aware that in May of 1983,
3 Suffolk County filed a Motion to admit a new contention on
4 the Diesel problems?

5 A I don't recall the time frame, but I recall the
6 County filing contentions, yes.

7 Q And did LILCO say, yeah, we had better look into
8 this, or did they oppose the contention?

9 MR. EARLY: Objection.

10 JUDGE MILLER: Sustained. Sustained.

11 BY MR. DYNNER: (Continuing)

12 Q Mr. McCaffrey, in connection with this program
13 that you described as addressing these problems, some of
14 which are described in this document, the diesel generator
15 operational review program, did LILCO in using its good faith
16 efforts to find out what the cause of these problems were,
17 disassemble any of the diesel engines?

18 A Without having the report in front of me, I
19 don't recall whether disassembly was part of it.

20 Q When LILCO or its contractors, Failure Analysis
21 Associate, after the crankshaft on Engine 102 broke, dis-
22 assembled that engine. Did they find any other defects
23 in that engine?

24 A Yes, they did.

25 Q Do you recall what some of those defects were?

1 A I guess in the course of disassembly they -- one
2 that comes to mind is they probably found some cracking in
3 what is called the camshaft galley area. That is one
4 example.

5 I don't recall all the details of what was found
6 in that tear down and inspection.

7 Q Do you remember whether they found that twenty-
8 three out of the twenty-four piston skirts had cracks or
9 indications in them?

10 A I recall there were cracks in the piston skirts.

11 Q Do you recall whether they found that the
12 connecting rod bearings were cracked in some of the engines?

13 A Yes.

14 Q Do you recall any other damage that was found,
15 or any defects in these engines besides those, now that
16 you can take your time and think about it?

17 A Off the top of my head I can't recall. Those
18 are reasonable examples. What was not clear at the time,
19 of course, is how that would have affected the operability
20 of the machine at the time. That certainly wasn't quantified.
21 Whether the defects were there or not, that is a fact. There
22 were defects noted. Their effect upon the diesels performance
23 I don't think was quantified.

24 Q Well, Mr. McCaffrey, if in August when they
25 disassembled the engines and they found all these defects,

1 does that lead you to believe that maybe the engines were
2 never disassembled and inspected in the same way prior to
3 August?

4 A That is correct. They were not disassembled
5 prior to August.

6 Q They were not; thank you, sir. And did LILCO
7 or its agents find after it disassembled the engines that
8 the crankshafts on engines 101 and 103, that is the other
9 two diesel engines, also had cracks in them?

10 A What the Company did in recognition of the
11 crankshaft failure, was to decide to embark upon a program
12 to tear down all the machines, to take a look at the
13 machines, to replace any parts that were defective.

14 So, I think that decision was a good decision.
15 I think they encountered a number of other areas that
16 had to be replaced, and the machines were then rebuilt and
17 the Company continued to try to enhance the reliability
18 of those machines to bring them to a state of reliability.

19 Q Now, let me remind you of the question I just
20 asked you, Mr. McCaffrey. It is, when LILCO or its agents
21 disassembled the engines, did it find that the crankshafts
22 in the other two engines numbers 101 and 103, that those
23 crankshafts had cracks in them?

24 A They had indication of crack initiation, that
25 is correct.

1 Q And in your opinion, Mr. McCaffrey, with your
2 expertise in this area, do you believe that if in response
3 to the NRC's concerns about the reliability for continuous
4 operation and for standby electric power indicated in the
5 March 1983 inspection report, do you believe that if in
6 response to that LILCO had disassembled and inspected the
7 engines, that it might have found these defects and cracks
8 earlier? In your opinion.

9 A I don't know, because one would have had to have
10 some knowledge about the speed of crack propogation, how
11 long it would take to propogate once you had initiation
12 source somewhere in the device. I don't know.

13 Q Mr. McCaffrey, is it your testimony, and do you
14 believe that in response to the warnings raised by the NRC
15 staff about the diesel engines as indicated in this report,
16 that LILCO acted in good faith and used all of its good faith
17 efforts to determine whether or not these matters were
18 significant?

19 A Yes, I think they did. I think the Company took
20 a look at the entire universe of issues that were out there
21 affecting these machines. Put together a group of qualified
22 LILCO and Stone & Webster engineering expertise, determined
23 what the elements should be of a diesel operability review
24 program, and based upon that background and knowledge, and
25 with the concurrence of the startup manager, we felt that that

1 program was adequate to address any of these concerns.

2 And when the crankshaft failed that was a
3 surprise.

4 Q And did it turn out that that program was
5 adequate?

6 MR. EARLEY: Objection.

7 BY MR. DYNNER: (Continuing)

8 Q Mr. McCaffrey, I have only a few more questions.
9 Mr. McCaffrey, at the top of page 7 of your testimony, you
10 say that the diesels are now available to perform their
11 intended function.

12 Do you know whether these diesels currently have
13 any cracks in them?

14 A Yes. The blocks on diesel 101 and 102, which
15 will be the subject of litigation as one of the contentions
16 in the TDI case, there are indications in the block that
17 we have assessed. We have reports from our consultants
18 indicating those cracks have, undoubtedly, grown to the extent
19 they will grow, and that we should expect that they will
20 stay in that configuration, and should not diminish the
21 availability or operability of those units.

22 Q Now, your Colt diesels, that you refer to in
23 your testimony on page -- bottom of page 13 and beginning of
24 page 14, what engineering work remains to be done on the
25 installation of those engines?

1 A For the Colt machines?

2 Q Yes.

3 A I believe it is completed.

4 Q Is there any additional work -- construction
5 work that remains to be done on the building or its
6 appurtenances before those engines can be ready for
7 operation?

8 A Yes, sir.

9 Q Could you briefly describe that work?

10 A What is underway at this time at the Shoreham
11 site is the building that will house the Colt diesel
12 generators has been essentially completed. The concrete
13 has been poured. The diesels are being moved into place.
14 At this point, perhaps, all three are located in the
15 buildings. I believe at least one is located in the
16 building.

17 The fuel oil tank building is an above grade
18 structure, reinforced concrete. The tanks manufactured
19 by Richmond Engineering Company have been delivered to the
20 site, and are installed on the bedding for that building,
21 and the building is now being completed around that.

22 The duck banks for connecting the Colt diesels
23 to the emergency switchgear rooms are completed. Cable
24 pulling from the Colt building to the switchgear rooms
25 has been -- will soon be initiated. That is the general

1 overview of the status of construction.

2 Q And with respect to your statement on page 16
3 of your testimony that the construction and testing is now
4 scheduled to be completed in May 1985, does that mean, sir,
5 that the Colt diesels will be ready to operate -- could
6 be ready to operate as the emergency onsite electric system
7 by as early as May of 1985?

8 A With your qualifier, 'could be,' is correct,
9 yes.

10 Q Now, you then go on to say that it won't be
11 necessary to connect the Colts to the plant immediately.
12 Is that premised on the assumption that LILCO will be success-
13 ful in convincing the other Atomic Safety and Licensing
14 Board that the Delaval diesels are adequate?

15 A The Company, indeed, has a decision to make.
16 Your management decision. And that is at the latter part
17 of this year, the Company will have to make a decision as
18 to whether we will cut over to the Colt diesel generators,
19 or whether we will rely upon the TDI diesels for operation,
20 supporting the operation of the plant.

21 Our official position at this point is we intend
22 to successfully litigate the TDI diesels before another Judge,
23 and with that, we would not make the final connections of
24 the Colt diesels to the plant until the first refueling
25 outage.

1 So, our current management position is to go
2 through the first refueling outage using the TDI diesels.
3 And certainly, of course, for this proceeding, for low
4 power, we are going with EMDs.

5 Q Mr. McCaffrey, during the time -- I am going
6 to shift back for one more short line of questioning. During
7 the time that the NRC was raising what I call the warning
8 flags that are set forth in the I&E Report, which is
9 Exhibit 17, did LILCO in its good faith efforts to determine
10 the problems with the diesels, communicate with other owners
11 or operators of Delaval diesels to see whether they were
12 having problems with those engines?

13 A First of all, I don't agree with the characteri-
14 zation of, 'warning flags,' but it is my understanding that
15 the startup organization, the startup manager had discussions
16 with other owners.

17 Q Well, do you know whether they did?

18 A Not for sure. I believe that is probably the
19 case.

20 End 11.
21 Mary fols.

22

23

24

25

26

Sim 12-1 1

2 Q So you don't know who they talked to; is that
correct?

3 A That is correct.

4 Q Mr. McCaffrey, if that is the case, could you
5 please describe for me the basis for your testimony on the
6 bottom of page 12, which states that "As LILCO discovered
7 and reported problems with its TDI diesel generators, other
8 facilities also experienced and reported problems with
9 TDI machines at their own power plants."

10 A What that means is that I have been aware,
11 because of the TDI litigation front about documents arising
12 out of other plants, Board notifications and the like that
13 relate to difficulties with other TDI machines.

14 Q So you got that information from documents; is
15 that right?

16 A Well, in addition to that, of course, as part
17 of the design, review and quality revalidation program,
18 which is described in my testimony, the company joined
19 an owners group of TDI owners to exchange difficulties on
20 the machine and develop a common program to address the
21 mutual concerns.

22 JUDGE MILLER: When was that?

23 THE WITNESS: LILCO embarked upon what we define
24 as our DRQR program in the fall ---

25 JUDGE MILLER: No. When did it join other

Sim 12-2

1 utility groups?

2 THE WITNESS: The official joining was probably
3 around January of '84, and then there was a subsequent
4 TDI owners group document submitted to the NRC in the
5 March time frame.

6 JUDGE MILLER: Very well.

7 BY MR. DYNNER:

8 Q In fact in your testimony on page 13 you refer
9 to LILCO employees that were part of this owners group
10 program. Were you a part of the owners group program,
11 Mr. McCaffrey, personally?

12 A Not part of the program organization per se, but
13 because of my licensing activities, I was routinely involved
14 in discussions related to LILCO's involvement in the DRQR
15 program. So I was pretty much abreast of the approach they
16 were taking.

17 Q So it is true, isn't it, that your knowledge
18 about that comes from the documents and meetings rather
19 than direct personal involvement; is that correct?

20 A Well, I did not attend DRQR owners group meetings.
21 I attended meetings with LILCO's participants in the DRQR
22 program, and in that sense I had involvement.

23 Q And, Mr. McCaffrey, you also referred to ---

24 A If I could just supplement that statement, if
25 I could have a moment.

Sim 12-3

1 Q Please go ahead, certainly.

2 (Pause)

3 A No, that is all I have on that one.

4 Q All right. Mr. McCaffrey, a few more questions.

5 On page 8 you refer to the check-out and initial
6 operation portion of the pre-opeational testing program.
7 Were you personally involved in carrying out that program
8 or assigned to that C&IO function?

9 A No.

10 Q On page 9, Mr. McCaffrey, you state the
11 following: "I should add that pre-crankshaft failure
12 testing included enhancements LILCO imposed to provide
13 additional measures of their reliability above and beyond
14 regulatory norms."

15 What were those enhancements?

16 A As part of a Long Island Lighting Company letter
17 that was submitted to the Nuclear Regulatory Commission
18 on January 6th, 1984, LILCO included in that submittal
19 a listing of the Shoreham pre-operational test program
20 which compared the NRC program requirements to Shoreham's
21 original pre-operational test program and then a third
22 comparison to the expanded recovery pre-operational test
23 program.

24 That submittal was made by Long Island Lighting
25 Company and I signed it out.

Sim 12-4

1 Q Mr. McCaffrey, you stated that was in January
2 of 1984. Now look at your testimony and the sentence I
3 just read to you.

4 Your testimony is these are enhancements pre-
5 crankshaft failure. That means before the crankshaft
6 failed. So that means that you are talking in your testimony
7 about prior to August of 1983, and not really enhancements
8 that you introduced prior to August of 1983.

9 A Right. The table does address both enhancements
10 after the failure and before the failure. An example of an
11 enhancement that was provided before the crankshaft failure
12 was the conducting of the 72-hour endurance test run which
13 is a test that the joint test group at the station determined
14 that they wanted to see run on the machines to give further
15 assurance of the machine's reliability and availability.

16 Q Anything else?

17 A The second item that is listed is a detailed
18 vibration and balance testing. As you pointed out before
19 in the I&E inspection report, the NRC had some concerns
20 about vibration levels on the machines. The company ran
21 detailed vibration surveys and did vibration analyses and
22 ultimately determined that the vibration levels on the
23 machines were within the allowable specifications.

24 Q So when you said above and beyond the regulatory
25 norms in your testimony there, you didn't mean to -- tell

Sim 12-5

1 me what you meant?

2 A I meant what I just quafified as those two
3 items.

4 Q Those two items ---

5 A The one that we rely upon most heavily would
6 be the 72-hour endurance run.

7 Q And was the vibration and balance test in response
8 to NRC staff concerns?

9 A I don't recall whether it was due to their
10 concerns or just a mutual decision to do additional testing.

11 Q When was that decision made, sir?

12 A That was in the 1983 time frame. That would
13 have preceded the crankshaft failure.

14 Q Would that have been after the NRC's I&E report?

15 A I suspect so.

16 Q And what about the 72-hour test, do you remember
17 when that was decided to be implemented?

18 A That had been in there for a significant period
19 of time. That had no bearing upon any NRC request or
20 concern. The company simply decided we would do a 72-hour
21 endurance run.

22 Q At what load, sir?

23 A I don't know what that load profile would be.
24 I am not sure what that load would be for 72 hours.

25 Q Well, what problems were disclosed by that test,

Sim 12-6

1 if any?

2 MR. EARLEY: Objection. I don't see the relevance
3 of what problems were disclosed by a specific test in the
4 test program to LILCO's good faith efforts.

5 JUDGE MILLER: The witness has testified to it.
6 You can just leave it dangling in the air.

7 If you know, what is your information?

8 THE WITNESS: I don't believe the 72-hour
9 endurance run showed any problems with the plant because,
10 as we have said, prior to the crankshaft failure the machines
11 had finished their pre-operational testing program and
12 therefore I assume that since that paperwork was signed
13 out that this test would have been successfully completed.

14 BY MR. DYNNER:

15 Q You weren't personally involved in that test,
16 were you, Mr. McCaffrey?

17 A No.

18 MR. DYNNER: I have no further questions,
19 Judge Miller.

20 JUDGE MILLER: State of New York on this
21 line of inquiry?

22 MR. DYNNER: This ---

23 JUDGE MILLER: I understand, but since you have
24 segmented it, I am giving others an opportunity, if they
25 wish. It is up to them. I don't really care.

Sim 12-7

1 Do you wish to examine on this line?

2 MR. PALOMINO: On the diesels?

3 JUDGE MILLER: Yes. You may do so. That is
4 your option, Mr. Palomino.

5 CROSS-EXAMINATION

6 BY MR. PALOMINO:

7 Q Mr. McCaffrey, when you provided specifications
8 to the TDI company for these diesels, what was the horse-
9 power rating per cylinder in those specifications?

10 A I don't know. One could readily calculate the
11 overall kilowatt rating of the machine and figure the number
12 of pistons and calculate it. I don't know.

13 Q You have no idea?

14 A Not offhand.

15 Q Do you know what horsepower ratings facilities
16 these machines were originally designed for?

17 A No, I don't.

18 Q Tell me, do you know whether there was a change
19 in the horsepower rating between the original design and
20 the specifications that you provided?

21 MR. EARLEY: Objection.

22 JUDGE MILLER: Overruled.

23 THE WITNESS: I am aware that the specifications
24 for the TDI machines had been increased in the past from
25 the original size that they were purchased at to encompass

Sim 12-8

1 increased load requirements in the plant. There was a
2 change at some point, but exactly when I don't know.

3 Q Do you know how much it was? Was it over a
4 hundred percent increase?

5 A No.

6 Q Do you know whether there was any redesign of
7 these engines, fundamental redesign, thickness of crankshaft,
8 thickness of pistons or cylinder heads, between the original
9 design horsepower rating and what was called for by your
10 company?

11 A I don't know.

12 Q Before you referred to a replacement of parts
13 as they became defective as you found them. They weren't
14 really replacement, were they, but they were redesigned
15 parts, weren't they?

16 A Certainly any time one is embarked upon replacing
17 a component on the machine, if the manufacturer has a newer
18 model and newer state-of-the-art component, one would install
19 that component at that time.

20 Q Well, wasn't it specifically a heavier crankshaft
21 rather than the original size and heavier diameter and
22 larger?

23 A You are speaking to the replacement crankshaft
24 following the failure?

25 Q Yes.

Sim 12-9 1

2 A It was a different size and heavier and thicker
crankshaft, correct.

3 Q And they had redesigned pistons after you found
4 that 23 out of 24 failed, didn't they?

5 A TDI didn't redesign the pistons after our
6 failures. TDI at the time we were replacing the piston
7 skirts had on the market different replacement components
8 at that point.

9 Q Didn't they redesign the piston bosses?

10 A I don't know.

11 Q You don't know. All right. How about the cylinder
12 heads, they were redesigned, too, weren't they?

13 A The company had already replaced cylinder heads
14 on the machines, as we discussed with Mr. Dynner before.
15 Recognizing the cracks in the cylinder heads and potential
16 water in leakage, the company had replaced the cylinder heads
17 with what I believe was a different newer and later design
18 cylinder head.

19 So the point is that as the machines were going
20 through the pre-operational program and replacement parts
21 were warranted, they were upgraded to the latest model.

22 Q Thereafter you had some trouble that you didn't
23 mention. After the crankshaft broke and then the pistons
24 had to be replaced and then the cylinder heads cracked, you
25 had the hold-down bolts pulling out and cracking the block,

Sim 12-10 1

didn't you?

2 A No.

3 Q The hold-down bolts didn't crack the block?

4 A No.

5 Q Did you have a redesigned block?

6 A TDI diesel 103 has at this point a replaced block
7 which is installed in the site at this point and the machine
8 is undergoing pre-operational testing.

9 MR. PALOMINO: I have no further questions.

10 JUDGE MILLER: Thank you.

11 Does the staff have any inquiry on this line of
12 interrogation?

13 MR. PERLIS: The staff has no questions.

14 JUDGE MILLER: Is there any redirect on this
15 line?

16 MR. EARLEY: Yes, Judge.

17 REDIRECT EXAMINATION

18 BY MR. EARLEY:

19 Q Mr. McCaffrey, you were asked about LILCO's
20 communications with other owners regarding problems with
21 TDI diesel generators. Are there mechanisms in place for
22 obtaining information about failures of components such
23 as diesels at other nuclear power plants or from the vendors?

24 A Certainly. There are a number of mechanisms.
25 One mechanism is the mechanism that I have been involved in

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Sim 12-11

1 and am currently involved in, and that is I manage the
2 company's overall effort to receive documents from the
3 Institute of Nuclear Power Operations.

4 Through INPO we receive routinely significant
5 event reports and significant operating experience reports
6 which my organization disseminates throughout the company.

7 In addition, as the primary NRC contact, I receive
8 all bulletins, circulars and information notices which is
9 another vehicle by which the NRC provides information to
10 LILCO.

11 The company participates in a Note Pad system which
12 is a computerized terminal system that connects the company
13 to essentially all the nuclear stations throughout the
14 country where one can ask questions, receive answers,
15 et cetera.

16 In addition, there is a program called NPRDS
17 which allows you to go search out the operating experience
18 on a given type of a pump or valve or whatever.

19 So those are some of the mechanisms.

20 Q Mr. McCaffrey, do the NRC regulations have any
21 provisions for obtaining information concerning failures
22 in other plants?

23 A The NRC regulations require that problems at
24 plants get sent into the NRC through licensee event reports
25 which are required by the technical specifications. It is

12-12

1 INPO that takes the LERs and converts them into significant
2 operating experience reports and feeds those back to the
3 utilities.

4 In addition, if a utility were to report something
5 under 10 CFR 50.55(e) or Part 21, that would find its
6 way to us through many of the mechanisms that I have mentioned
7 before.

8 Q Mr. McCaffrey, you were asked when LILCO joined
9 the owners group and I believe you said in January of 1984,
10 and this was the owners group review of TDI diesels.

11 When did LILCO start its own DRQR program?

12 A LILCO's DRQR program was started approximately
13 in November of 1983, and in fact became the model upon which
14 the owners group embarked upon its DRQR program, and that
15 is that the LILCO program was the core of the program and
16 everybody else basically rode along on that program.

17 Q Mr. McCaffrey, just to make the record clear,
18 I believe in discussing Suffolk County Exhibit LP-16
19 regarding a notice of violation you said there was a
20 difference of opinion.

21 Could you explain that difference of opinion,
22 please?

23 A Yes. I don't have the letter with me here, but
24 the company responded to the notice of violation and
25 actually as it came out earlier an I&E inspection report.

Sim 12-13 1

2 The company's position on our interpretation
3 of the regulatory guide was provided in those documents,
4 and that is where the difference of view came in in
5 interpretation.

6 I can recall at that time discussing this with
7 the Startup Manager and that was his position.

8 MR. EARLEY: If I may, Judge, I am going to show
9 the witness two documents that I would like to ask him
10 some questions about.

11 JUDGE MILLER: Are you going to identify them?

12 MR. EARLEY: Judge Miller, the two documents
13 are one is a letter from the Long Island Lighting Company
14 dated May 12th, 1983. It is denominated SNRC-884 and
15 it is entitled "NRC Enforcement Action 50-322/EA83-20."
16 We will mark that, if we can, as LILCO Exhibit No. LP-9.

17 (The document referred to
18 was marked LILCO Exhibit
19 LP-9 for identification.)

20 MR. EARLEY: The second document that I would
21 like marked for identification is a letter from LILCO
22 dated March 16th, 1983 to the NRC. It is numbered SNRC-859
23 and it is in regard to NRC Inspection No. 82-35, Shoreham
24 Nuclear Power Station, Unit No. 1, Docket No. 50-322. That
25 would be LILCO Exhibit LP-10.

JUDGE MILLER: What is the date on that one?

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Sim 12-14

1 MR. EARLEY: March 16th, 1983.

2 The document referred to was
3 marked LILCO Exhibit LP-10
4 for identification.)

INDEXXXX

5 MR. EARLEY: For the Board's information, these
6 documents are LILCO's responses to the violation that
7 was inquired into by counsel for Suffolk County. We did
8 not know that they were going to go into these matters, and
9 I don't have copies available for everyone right now. We
10 can make them available. I believe the county has received
11 these responses in the normal course of distribution when
12 they were actually produced.

13 JUDGE MILLER: Well, that may be, but if you
14 are marking them for identification and propose now or
15 later to proffer them, you will have to conform with our
16 procedure to furnish copies, three to the Board and
17 so forth.

18 MR. EARLEY: We will make copies available.

19 (Pause.)

20 MR. DYNNER: Judge Miller, I have just asked
21 Mr. Earley if he would, he can go ahead and identify it
22 for the record, but I would like to have copies in front
23 of me in the event that it is necessary to do any recross
24 on it, sir.

25 JUDGE MILLER: Very well.

Sim 12-15

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BY MR. EARLEY:

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Q Mr. McCaffrey, will you please review the documents that have been marked as LILCO Exhibits LP-9 and 10 and tell me whether those documents were submitted by LILCO in response to the document entitled LP Exhibit 16, or I should say in response to the violation that is described in document LP Exhibit 16, and that is Suffolk County Exhibit 16?

A Yes.

#13-1-SueT1

Q And do those documents explain LILCO's position with respect to that violation?

A Yes, they do.

MR. EARLEY: Judge, I have no further questions.

JUDGE MILLER: Any further recross on this phase?

MR. DYNNER: Yes, I have a few questions, sir. If I may look at the documents that have been proffered the witness --

JUDGE MILLER: Yes. Let counsel look at the documents.

(Mr. Dynner is looking at documents.)

MR. DYNNER: Judge Miller, I am going to have to request that the Board perhaps give Mr. Earley about five minutes to make xerox copies of this document because I am going to have a few questions, and I certainly think it would be more productive if everybody had in front of them these when I ask those questions.

JUDGE MILLER: Do you have an associate you can send out? We will have a recess about 3 o'clock. We have another segment of examination of this witness. I don't want to stop now. But you could have somebody start on them.

MR. EARLEY: I will have that done, Judge.

JUDGE MILLER: All right. When they are done,

#13-2-SueT1

you may have an opportunity to recross.

2 MR. DYNNER: Thank you, sir. I have a few more
3 questions on recross, and I can either wait and do it all
4 together if you think that would be more appropriate.

5 JUDGE MILLER: Are they related? Or, can you
6 separate them sufficiently?

7 MR. DYNNER: They are relatively short. I
8 think it would make more sense to just do the recross all
9 at one time when he gives me the copies.

10 JUDGE MILLER: You may have leave to do so.

11 MR. DYNNER: Thank you, sir.

12 JUDGE MILLER: Mr. Palomino, do you have any
13 questions on recross?

14 MR. PALOMINO: I would be following him, right?

15 JUDGE MILLER: Unless you have some of your own
16 not related. It's your option.

17 MR. PALOMINO: I would rather wait for the
18 documents.

19 JUDGE MILLER: Staff.

20 MR. PERLIS: Staff would also like to see the
21 documents.

22 JUDGE MILLER: The Staff doesn't have a copy?

23 MR. PERLIS: No. The NRC Staff did get copies.
24 We don't have any with us here.

25 JUDGE MILLER: I understand. All right. Ms. Letsche

#13-3-SueT1

1 do you want to go into that other segment that you asked
2 leave to handle separately?

3 MR. DYNNER: Judge Miller, can I suggest in view
4 of this matter that perhaps we take our mid-afternoon break
5 now and then we can resume. I will have, I believe, relatively
6 short cross-examination and then we can go into the other
7 segment.

8 JUDGE MILLER: All right.

9 MR. DYNNER: If that makes sense to the Board.

10 JUDGE MILLER: Let us know in about ten minutes
11 how you are coming, can you?

12 MR. ROLFE: Yes, Judge Miller.

13 JUDGE MILLER: Probably it would take fifteen,
14 but let's have a report on it.

15 (Whereupon, a recess is taken at 2:35 p.m., to
16 reconvene at 3:00 p.m., this same day.)

17 JUDGE MILLER: All right. Well, why we are
18 having distribution made, let me state for the record that
19 the Board has requested an opportunity to make a limited
20 view of the site. We wish to do it Saturday. We have
21 limited appearance statements from 9 to 12, thereafter at
22 a convenient time maybe one o'clock or whenever it is
23 convenient.

24 The Board would like to view portions of the
25 premises. We will indicate to you now all of the parties

#13-4-SueT 1

2 and counsel are invited to be there. We wish to have no
3 ex parte statements, conversations of any kind, either with
4 the Board or in the presence of the Board. It's strictly
5 a view. We want nothing beyond that.

6 We have to give the Company several days notice,
7 as I understand, as well as the names and social security
8 numbers of those who plan to attend. So, the Board, the
9 three members of the Board, will give that information now.
10 The rest of you can make your own arrangements if you wish.
11 You are perfectly welcome.

12 As I say, this is not part of the hearing. We
13 don't intend to have any discussions, but we wanted to view
14 portions of the premises. And I will ask Judge Bright to
15 indicate for all of you which portions. We don't intend
16 to have a complete view of the plant. That's too much
17 walking.

18 JUDGE BRIGHT: We have no desire to look at the
19 entire plant. I've seen enough plants. Well, I would
20 rather not go into that.

21 But the one thing that is unusual here, in my
22 experience, are the emergency diesels and the gas turbine.
23 I would like to be able to see them so that when I read
24 testimony or I hear testimony about them, I will have some
25 way of connecting what you are saying with what I see is
there. The pictures that I received are totally unintelligible.

#13-5-SueT1

So that will be the extent.

2 JUDGE MILLER: Judge Johnson.

3 JUDGE JOHNSON: I think Judge Bright has
4 expressed my interest. It is no point in repeating it.

5 JUDGE MILLER: All right. Does anybody else
6 want to make any statement for the record as to this aspect?

7 MR. ROLFE: Judge Miller, if I might just make
8 clear that anyone who does wish to attend this tour with
9 the Board ought to give me or one of the LILCO representa-
10 tives their name and social security number by midday
11 tomorrow so that we can make the appropriate security
12 arrangements.

13 JUDGE MILLER: All right. We will request every-
14 one -- you know the names of the Board. We have the social
15 security numbers which has been given to counsel I believe.

16 All right. Are you ready now to, I suppose,
17 cross-examine? Was that it, in view of the LILCO Exhibits
18 9 and 10 that have been identified and copies of which have
19 now been furnished to counsel?

20 MR. DYNNER: If I could have about just one more
21 second to look at it, please?

22 JUDGE MILLER: Yes. Mr. McCaffrey, as I under-
23 stand it, you have testified that these two exhibits, one
24 appears to be a letter from Long Island Lighting Company,
25 dated May 12, 1983 with a fair number of pages involved, and

#13-6-SueTi

2 the other is also on the stationery of LILCO, dated March
3 16, is it your testimony that these documents reflect,
4 among other things, the Company's position with regard to
5 the matter which you have previously been questioned on
6 cross-examination?

7 WITNESS MC CAFFREY: That's correct, Your Honor.
8 I believe that if one reads the entire record of the
9 inspection report, which we have already been through,
10 coupled with these two responses, you would see the summary
11 of the Company's position on the issue and the basis for
12 any disagreements with any elements of the inforcement
13 action.

14 JUDGE MILLER: Okay.

15 BY MR. DYNNER: (Continuing)

16 Q Mr. McCaffrey, in response to some questions by
17 Mr. Earley, you referred to the fact that LILCO had a
18 mechanism for getting information about other plants. You
19 referred to INPO, I-N-P-O, and to NPRDS.

20 Did those organizations provide to LILCO all of
21 the information concerning Part 21 reports and 50.55.E
22 reports relating to the Delaval diesel engines at other
23 nuclear plants?

24 A I don't recall specifically if we got documents
25 on 50.55.E and 21s through INPO or NPRDS. What I'm saying
is, those were systems that it is probable that if there were

#13-7-SueT 1

2 major developments like that they would have fed it to us.
3 I just can't simply sit here right now and say I know I saw
4 a Part 21 come through the INPO system.

5 I'm confident that any Part 21 reports have
6 been provided to LILCO and are currently being used in the
7 TDI litigation case.

8 Q I'm talking about, Mr. McCaffrey, the period
9 prior to the date that the crankshafts broke. Is it your
10 testimony that these INPO and NPRDS programs were in effect
11 at LILCO prior to the time that the crankshaft broke?

12 A Yes.

13 Q And --

14 JUDGE MILLER: Hold it. Could you --

15 MR. DYNNER: Yes, sir.

16 JUDGE MILLER: I forgot when I was mentioning
17 the other matter. I just had a communication when we were
18 in Chambers during recess that several persons have telephoned
19 saying that they believed, they stated as facts, that
20 two local newspapers are carrying and have carried informa-
21 tion that the hearings which are going to entertain the
22 limited appearance statements were Friday.

23 That's totally erroneous. They are Saturday.
24 They have always been Saturday. I've just checked our own
25 notice in the Federal Register, which is 49 Federal Register
26 29341, under date July 19, 1984, in which the limited

#13-8-SueT

1 appearance statements have always been scheduled and will be
2 held Saturday and not Friday.

3 So, if there is any confusion in the local
4 papers -- I don't know the cause of it, but in any event
5 correct it if you have any ability so to do, if you have
6 any inquiries. Now it will be held, according to the
7 notice, at the Office of the County Legislature, County
8 Center, Legislative Meeting Room, Riverhead, New York,
9 Saturday, August 4, 9 a.m. to 12 noon.

10 Thank you. I'm sorry. You may proceed.

11 BY MR. DYNNER: (Continuing)

12 Q Mr. McCaffrey, is it your testimony that those
13 programs, the INPO and NPRDS programs, which you say were
14 in effect prior to the date the crankshaft broke, were
15 effective in enabling LILCO to obtain information concern-
16 ing Delaval diesels at other plants?

17 MR. EARLEY: Objection. Judge, I think the
18 effectiveness of the established programs is irrelevant to
19 the good faith efforts. The witness has testified these
20 programs that industry has set up, they belong to those
21 programs. Whether or not in hindsight they were effective
22 or not is not particularly relevant to whether LILCO was
23 making good faith efforts.

24 JUDGE MILLER: Well, it may not be a big issue
25 but I think you brought it up, the mechanism, so if it's

#13-9-SueT

2 worth bringing up he would certainly have a right to find
3 out, in a brief fashion, what the effect of it was, or
4 the effectiveness of it, and so forth, if the witness
5 knows.

6 WITNESS MC CAFFREY: The NPRDS and INPO systems,
7 as well as the bulletins and circular systems we talked
8 about, were in effect. We are tied into all the known
9 systems that would provide such information to LILCO.

10 If INPO came across information of significance,
11 like a Part 21 or 50.55.E on a diesel issue, or any issue,
12 and they deemed that important they would funnel that through
13 the INPO CN program, which is the mechanism that feeds it to
14 us.

15 So, we were tied into that program. Now, I just
16 can't tell you right here that I know a given issue came
17 through on a given date or whatever. But if it was put into
18 the system, we got it and gave it to our respective organiza-
19 tions.

20 MR. DYNNER: I would like to have distributed
21 and marked for identification, Suffolk County LP Exhibit 18.
22 This exhibit consists of a cover page which is a letter,
23 dated February 13, 1984. It is, Subject: Report of Meetings
24 of Representatives of the Transamerica Delaval, Inc., TDI
25 Emergency Diesel Generators Owners' Group, Board Notification
84-020. That document, in the second paragraph, refers to

#13-10-SueT

2 the fact that "The Staff provided a brief summary of TDI
3 operating experience for both nuclear and non-nuclear
4 applications." And attached to that letter is that portion
5 of the Board notification which comprises the Staff's
6 written summary.

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6 (The document referred to is
7 marked Suffolk County LP
8 Exhibit 13 for identification.)

9 BY MR. DYNNER: (Continuing)

10 Q Mr. McCaffrey, please take your time and look at
11 that document for a minute. I'm going to ask you in a
12 minute whether you have seen it before.

13 A (The witness is looking at document.)

14 Q Now, Mr. McCaffrey, in connection with the
15 mechanism that you referred to in answer to Mr. Earley's
16 question, did LILCO in attempting, pursuant to your
17 testimony, to exercise good faith efforts to find out about
18 problems with the diesel engines at other plants, ascertain
19 the information concerning problems at the San Onofre
20 plant which are listed on the first page of the NRC summary
21 prior to the time the crankshaft broke?

22 So, we wouldn't be talking about anything on
23 this list that is dated after August of '83.

24 A I don't know if LILCO was aware of this informa-
25 tion. I could point out that, for instance, the July 1981

#13-11-SueT

1 event, excessive vibration of lube oil test line, simply is
2 not the sort of an item that would be fed back into a
3 significant industry feedback program.

4 Q That's a Part 21, a 10 CFR, Part 21 report. Is
5 it your testimony Part 21 reports wouldn't be fed into your
6 system?

7 A What I was referring to was not the Part 21.
8 The Part 21 was the December 1980 item, the first item.

9 I was referring to the second item, July 1981,
10 lube oil leak and fire.

11 Q Oh, the fire. You didn't know about the fire?
12 Is that your testimony?

13 A I don't know if we knew. What I'm testifying
14 is, I don't believe that an item like that would necessarily
15 have been fed back into an INPO program on significant
16 events.

17 Q Well, Mr. McCaffrey, do you have any personal
18 knowledge at all as to whether these first three items
19 listed under San Onofre were taken into consideration by
20 LILCO in its efforts to determine whether these Delaval
21 engines could be assured to meet their requirements under
22 GDC-17 before the crankshaft broke?

23 A I don't know. But I also don't know whether
24 the Company's diesel operability review program, which was
25 instituted in March of 1983, picked up some of these elements.

#13-12-SueT

I don't know.

2 Q You don't know. Now, if you will turn the page,
3 Page 2 is Grand Gulf. And there we have a listing of one,
4 two, three, at least the first ten items, which occurred
5 before the crankshaft broke.

6 Now, do you know whether LILCO made any effort
7 or found out about these problems with Delaval engines at
8 these other nuclear plants before the crankshaft broke?

9 A I don't know. What I do know is that the inde-
10 pendent safety engineering group at the time period that
11 preceded the crankshaft failure had extensive documents
12 related to industry feedback. ISEG engineers had reports.
13 Which ones they were, I don't know.

14 I know they had an accumulation of feedback type
15 of information, because as I said the ISEG group routinely
16 evaluates industry developments and tries to relate it to
17 the plant. I can't say from which mechanism they arrive.

18 end #13
19 Joe flws

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1 Q Did you have anything to do with this ISEG
2 group, Mr. McCaffrey?

3 A I was Chairman of the Independent Safety
4 Engineering Group.

5 Q Now, if they knew about this information, were
6 -- or you think they might have known about this information
7 -- did they do anything about it?

8 A What ISEG does is evaluate industry experiences,
9 and issue recommendations to the plant for the engineering
10 organizations, where improvements in safety or reliability
11 are appropriate.

12 Q What did they do about all this information
13 here about these problems at other nuclear plants, if
14 anything? Before the crankshaft broke?

15 A I don't recall specifically what reports would
16 have been generated prior to the crankshaft.

17 Q Well, did ISEG make any recommendations about
18 any of these matters while you were the Chairman of ISEG?

19 JUDGE MILLER: What does that have to do with
20 LILCO?

21 MR. DYNNER: ISEG, as I understand it, is
22 LILCO. It is part of the LILCO organization. Isn't that
23 correct, Mr. McCaffrey?

24 WITNESS McCAFFREY: That is correct.

25 MR. DYNNER: I am sorry, Judge Miller. I should

1 have been more clear, because there are so many acronyms
2 thrown around. ISEG stands for what, Mr. McCaffrey?

3 WITNESS McCaffrey : ISEG is the Independent
4 Safety Engineering Group, which is part of the Long Island
5 Lighting Company System, and as I described before, its
6 function is to assess --

7 JUDGE MILLER: I recall your description before,
8 and I think the term, 'independent' is what led me to
9 believe -- it is independent within LILCO.

10 WITNESS McCaffrey: The Nuclear Regulatory
11 Commission has required that this engineering group be
12 independent of the operating chain, so they are not burdened
13 with the pressures of keeping a plant on line. They do
14 independent assessments.

15 JUDGE MILLER: I see. Thank you.

16 BY MR. DYNNER: (Continuing)

17 Q Now, while you were Chairman of ISEG, to get
18 back to this question, what did ISEG do about all these
19 problems that it knew about, if anything?

20 A As I said, I don't recall the specific reports
21 that would have come out. ISEG assesses hundreds of industry
22 experiences that come in. They compile events from significant
23 event reports for IMPO. Significant operating experience
24 reports, related bulletins, circulars, information notices,
25 searches of licensee event reports. There are tons of

1 information that comes in and has to be gathered.

2 What I simply am saying is that I don't recall
3 specifically how that was finally put into a package, and
4 what format a recommendation would have gone out.

5 Q Do you know whether it did put this into a
6 package while you headed ISEG?

7 A I don't know.

8 Q Well, Mr. McCaffrey, we will skip the page 4,
9 which talks about some of the problems at Shoreham for the
10 moment, and I am going to ask you to turn to page 6, and
11 the operating experience of non-nuclear marine applications.

12 Did LILCO do anything through ISEG or otherwise
13 to ascertain all of these -- what have we got here -- 11 or
14 12 pages on the NRC summary of problems that occurred on
15 Transamerica Delaval diesel generators?

16 A I don't know. Again, this compilation was put
17 together by the Nuclear Regulatory Commission following
18 the crankshaft failure, and was intended to compile the
19 available information in the industry.

20 Q All right. Mr. McCaffrey, I am going to move
21 on to another issue. You, in response to one of Mr. Earley's
22 questions, referred to the LILCO DRQR program as opposed to,
23 I think you testified previously, about the Owners Group
24 DRQR program. Were you personally involved in the LILCO
25 DRQR program?

1 A I think I have already answered that I was
2 not personally involved as a member of the program staff.
3 The program has an organizational staff, with an organizational
4 chart, and I was not part of that formal organization.

5 I did participate as I said earlier in LILCO
6 meetings on elements of the DRQR program, and as I said,
7 what the Owners Group Program was, was what LILCO's program
8 was adopted by the owner's group in early 1984, which LILCO
9 had already embarked upon in roughly the November 1983
10 time frame.

11 So, the point is, while the crankshaft failure
12 was certainly a shock to the Company, the Company took the
13 action to take upon itself complete tear downs of the
14 machines, complete design review, quality revalidation
15 effort, because we thought that was appropriate. And
16 following that, the industry came on board with the same
17 initiative.

18 Q Did you think that the NRC Staff was going to
19 license this plant after the diesel engines had one crankshaft
20 that broke in two, and found cracks in two others, without
21 LILCO undertaking some kind of program?

22 MR. EARLEY: Objection. He is asking the witness
23 to speculate about what the NRC Staff did or didn't think.

24 JUDGE MILLER: He asked what his own expectation
25 was, and the witness has testified he had a significant role

1 representing LILCO in a sense, with NRC regulations and
2 procedures. If he knows, he may testify.

3 WITNESS McCAFFREY: I think the program that
4 was undertaken is a reasonable program that one would think
5 was appropriate considering the failure of the crankshaft.

6 BY MR. DYNNER: (Continuing)

7 Q Yeah, but my question, Mr. McCaffrey, is whether
8 LILCO just did this out of their concern and good faith
9 effort about the diesels, or whether they did it because
10 they knew that the NRC Staff wasn't going to allow this to
11 go on line with diesel engines that had broken crankshafts.
12 Do you know the answer to that? Did you have any indication
13 from the Staff of concern about licensing the plant with a
14 broken crankshafts in it?

15 A Yes. The NRC had expressed concerns about the
16 overall reliability of the machines in its service throughout
17 the country.

18 The Company recognized that concern. And we
19 think that the program that the Company adopted was responsive
20 to both the Company's concerns and the NRC's concerns and
21 we recognize that such a program would probably be necessary
22 to create the confidence that we felt was necessary for
23 licensing the plant in providing the reliable onsite AC
24 power source that the regulations call for.

25 Q Mr. McCaffrey, please turn to LILCO LP-9. This

1 is the letter of May 12, 1983, that I believe -- it is
2 entitled, NRC Enforcement Action.

3 I think that Mr. Earley asked you earlier whether
4 this document constituted LILCO's response to the notice
5 of violation by the Staff, which was introduced as Suffolk
6 County LP- -- what is it, 16? Is that right? Is that right,
7 Mr. McCaffrey?

8 A Both of these documents are responsive to the
9 issue discussed in the violation, yes.

10 Q All right. Now, we are talking about the May 12
11 letter, Mr. McCaffrey, that is LILCO LP-9. Do you have
12 that in front of you?

13 A Yes.

14 Q Does this letter constitute an appeal by LILCO
15 to the violation and fine that was imposed?

16 A If you will just give me a moment to review it
17 again.

18 Q Sure.

19 (Witness peruses document)

20 A I wouldn't characterize it necessarily as an
21 appeal. What you see here is the Company's continuing effort
22 to put in perspective the circumstances surrounding the
23 testing. The judgments are provided by the test engineer
24 in trying to explain the circumstances, and -- surrounding
25 the violation that was issued.

1 Q This is, in fact, the required thirty day
2 response to a notice of violation, isn't it, Mr. McCaffrey?

3 I will point out to you that it is in fact
4 thirty days after the date of the letter of notice of
5 violation.

6 A Yes. This constitutes our thirty day response.
7 This is dated May 12th. We provided additional information
8 previously by SNRC 859, which is LP-10.

9 Q And I note on page 4 of this letter, the
10 statement that LILCO admits that the facts, including the
11 information provided above may constitute a violation.

12 And then goes on and says LILCO believes these
13 facts provide a basis for reconsideration of the severity
14 of level of violation. Did the Staff reconsider the
15 notice of violation?

16 A No.

17 Q Did the Staff respond to this letter?

18 A I don't recall.

19 Q Did the Staff reduce the fine?

20 A No.

21 Q Did the Staff agree with your explanation in
22 this letter that this was as stated?

23 A I don't know. The fact that the Company got a
24 fine is not atypical for the industry. This was the first
25 and only fine the Company has ever received. Many, many

1 plants get fines. A level 3 is not the worst level of
2 violation that one can obtain. Level 1 and 2 that
3 precede it.

4 So, this is the first and only instance of
5 a Level 3 violation that the Company received. We felt
6 at the time that there were circumstances to warrant that
7 being reconsidered to a Level 4, which typically didn't
8 get associated with a monetary fine, and furthermore,
9 the fine level of 40,000 I believe is just about the lowest
10 level of monetary fine that can be imposed for a Level 3.

11 Q Mr. McCaffrey, this letter represents LILCO's
12 side of the story. What I am trying to get at is it
13 admits the facts, and what I am trying to get at from you
14 is do you know whether the Staff disagreed with you. What
15 you said in this letter.

16 A I assume they did, because we eventually paid
17 the fine.

18 Q All right. Now, let's look at LILCO LP-10. This
19 is a letter, SNRC 859, dated March 16, 1983. Was this letter
20 written in response to the concerns raised by the Staff in
21 I&E Report 83-07, which is Suffolk County LP-17?

22 A Could I have that reference again?

23 Q Yes. Does this letter respond to the concerns
24 raised by the Staff in I&E Report 83-07, which you should
25 have before you as marked Suffolk County LP Exhibit 17?

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1 A This is the March 24th dated document?

2 Q Yes.

3 A I have that. This is LILCO's first response
4 to the issue.

5 Q I just got confused. I don't think this letter,
6 in fact, can be the response to the Inspection Report 83-07
7 as I look at it now. It is dated March 16, and the report
8 was sent out March 24, and now I see the title -- I think
9 this is a response to a different I&E Report, No. 82-35, is
10 that correct?

11 I am sorry. I was not trying to trick you in
12 any way, Mr. McCaffrey. I got confused myself for a minute.
13 This is, in fact, this LP-10 document is, in fact, another
14 response to the violation of the testing requirements for
15 overload, isn't that what it is?

16 Let me try to sort this out in question form
17 for everybody. As I understand it in looking at this
18 document more carefully, now that I have had a little time,
19 LILCO LP-10 is an initial response to the first I&E Report
20 Number 82-35, which is not -- I repeat, not -- an exhibit
21 in this case.

22 This document that LILCO has introduced is
23 mentioned in the Suffolk County LP Exhibit 16, which is the
24 letter accompanying the notice of violation. And in the
25 first paragraph it says that LILCO has provided a written

1 reply to the Inspection Report, SNRC 859, dated March 16,
2 1983. Do you agree with me, Mr. McCaffrey, now?

3 A Yes. The dilemma is we are missing a document
4 that LILCO had received an inspection report on the subject
5 of the operational-- preoperational testing load.

6 We responded on March 16th, prior to the notice
7 of violation, and this was the area where the Company tried
8 to put the facts in perspective on the testing, and why
9 we thought there was a reasonable basis for our position.
10 Then came the inspection report you referred to, which is
11 dated April 12th.

12 Q We are not missing a document. The only document
13 that we put into -- as an exhibit, was the notice of violation
14 and accompanying letter, and then you responded with the
15 initial response to the inspection report, and then to this
16 other letter. You, in fact, have not introduced any letters
17 concerning the inspection report 83-07, which is Suffolk
18 County LP Exhibit 17, and that is correct, isn't it, Mr.
19 McCaffrey?

20 A What I believe I said is that in response to the
21 April 12th, 1983 inspection report, that there were two
22 documents that were applicable to that document, and literally
23 yes, one preceded it, and one post-dated it.

24 Q And in answer to the question that I just asked
25 you, which is that there is no letter that you put into an

1 exhibit that responds to 83-07, your answer is: That
2 is correct.

3 Isn't that true?

4 MR. EARLEY: Judge Miller, since it was not
5 the witness who was introducing it into evidence, it was
6 counsel, I will represent those are the two documents that
7 I handed the witness, LP-9 and 10. I think we identified
8 them for the record. It doesn't include anything else.

9 MR. DYNNER: Okay. That is all. Thank you,
10 Mr. Earley. I just wanted to clear up a muddled record.

11 WITNESS McCAFFREY: May I make a comment?

12 JUDGE MILLER: Well, what is it in regard to?

13 WITNESS McCAFFREY: It is in regard to having
14 the Board, perhaps, understand the enforcement process.
15 It is a two-step process, and that is why it may be important
16 to shed some light on that.

17 JUDGE MILLER: I don't think we are concerned
18 at the moment with the enforcement aspects, but rather with
19 the notice, knowledge, good faith, and that type of thing.

20 MR. DYNNER: I have no further questions,
21 Judge Miller.

22 JUDGE MILLER: Mr. Palomino?

23 MR. PALOMINO: I have no further questions on
24 the diesels.

25 JUDGE MILLER: Staff?

1 MR. PERLIS: The Staff has no questions.

2 MR. EARLEY: No more redirect.

3 JUDGE MILLER: All right. That concludes then
4 that phase of the direct testimony, and the cross examination.
5 Now , the other aspect is before us I believe, is that
6 correct?

7 MR. DYNNER: Judge Miller if you think it is
8 appropriate, since the matters and the documents that
9 we have introduced relate directly to the cross examination
10 on this matter and the witness' testimony, if you think
11 it is appropriate, I can move the exhibits No. 16, 17, and 18
12 into evidence at this point.

13 JUDGE MILLER: Then are the LILCO exhibits
14 for identification 9 and 10, addressing the subject matter
15 within that group of exhibits?

16 MR. EARLY: Yes, Judge. LILCO would move in
17 at the same time --

18 JUDGE MILLER: Is there any objection then
19 to the admission at this point rather than in the case in
20 chief of the County's documents.

21 MR. EARLEY: No objection.

22 End 14.
23 Mary fols.

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Sim 15-1 1

JUDGE MILLER: You are offering now Suffolk County

2 Exhibits LP ---

3 MR. DYNNER: 16 which is the ---

4 JUDGE MILLER: Yes, I have it.

5 MR. DYNNER: All right. 16, 17 and 18, and we
6 have no objection to LILCO's LP-9 and 10.7 JUDGE MILLER: Okay. Suffolk 16, 17 and 18 are
8 admitted into evidence.9 (Suffolk County Exhibits
10 LP-16 through LP 18, inclusive,
11 previously marked for identifi-
12 cation were admitted into
13 evidence.)14 JUDGE MILLER: Likewise, admitted into evidence
15 will be LILCO's Exhibits 9 and 10.16 (LILCO's Exhibits LP-9 and
17 LP-10, previously marked for
18 identification, were admitted
19 into evidence.)20 JUDGE MILLER: Does that complete now the exhibit
21 aspect of this phase of the testimony?

22 (No response.)

23 JUDGE MILLER: Apparently so.

24 All right, you may proceed.

25

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1 MS. LETSCHE: Judge Miller, at this time the
2 County would move to strike the portion of Mr. McCaffrey's
3 testimony which begins on page 17 with the title or the
4 heading "Cost of the Shoreham Licensing Proceeding," and
5 continues through the end of the prefiled testimony which
6 is on page 33, as well as the documents which were Attachments
7 2, 3 and 4 to the testimony and which have now been
8 designated as LILCO Exhibits LP-6, 7 and 8 that were going
9 to be offered into evidence along with Mr. McCaffrey's
10 prefiled testimony.

11 The basis of this motion, Judge Miller, is that
12 this testimony, this portion of Mr. McCaffrey's testimony
13 and the exhibits which are referred to in this portion of
14 his testimony are not relevant to the issues presented in
15 this proceeding.

16 If I might explain briefly a little further ---

17 JUDGE MILLER: I thought you were going to
18 cross-examine.

19 MS. LETSCHE: If my motion is denied ---

20 JUDGE MILLER: The motion is denied. Why don't
21 you go ahead and get this cross-examination going.

22 MS. LETSCHE: Judge Miller, would you care to
23 hear the grounds for my motion?

24 JUDGE MILLER: I might later, but I want the
25 cross-examination because that is what we gave you leave

Sim 15-3

INDEXXXXX

1 to do out of order. You will be given an opportunity, yes.

2 CROSS-EXAMINATION

3 BY MS. LETSCHE:

4 Q Mr. McCaffrey, I would like to direct your
5 attention, please, to page 18 of your prefiled testimony.
6 Now I am referring to the answer to Question 25. In the
7 second paragraph of that answer you discuss events that
8 took place during the period 1976 to 1979; is that correct?

9 A Which lines are you referring to?

10 Q I am talking about the second paragraph and the
11 answer to Question 25. It beings "During the 1976 to 1979
12 time period."

13 Do you have that?

14 A Yes, I do.

15 Q And I take it that the discussion contained in that
16 paragraph, which is on page 18 and carries over to page 19,
17 deals with that time period; is that correct?

18 A That is correct.

19 Q Now this is the beginning of your summary of
20 what has been happening in the hearings relating to the
21 Shoreham licensing proceeding; is that correct? This is
22 the beginning of your chronological summary of those
23 activities, right?

24 A Yes.

25 Q Would you direct your attention to the last

Sim 15-4

1 sentence of the preceding paragraph. It says, does it not.
2 "I will only provide" ---

3 JUDGE MILLER: He said yes.

4 MS. LETSCHE: Oh, I am sorry. I didn't hear
5 him.

6 JUDGE MILLER: He said it softly, but there is
7 no dispute.

8 THE WITNESS: Yes. In this paragraph I am
9 describing the '76 to '79 time frame.

10 BY MS. LETSCHE:

11 Q And you state about half way down that
12 paragraph that "LILCO without technical justification was
13 consistently held by the staff to a different standard
14 than other plants during the 1976 to 1979 time period,"
15 isn't that right?

16 A That is correct.

17 Q Now is it your testimony, Mr. McCaffrey, that
18 the staff conducted its review of the documents submitted
19 up till that time by LILCO and made judgments about the
20 adequacy of these submittals by LILCO without any technical
21 justification?

22 A No.

23 Q Can you identify for me the standards to which
24 LILCO was held during the time period 1976 to 1979 that
25 were different than other plants without technical

Sim 15-5

1 justification by the staff?

2 A It is not a matter of speaking to standards. The
3 staff had their own internal review criteria and standards
4 which they uniformly applied to 12 plants that came
5 through the review process.

6 What I am speaking to here is the effect of
7 intervention whereby the staff witnesss in the course of
8 their review would go beyond the norm for the technical
9 review process, and for a very practical reason, recognizing
10 that intervention for this plant was severe and they could
11 expect potentially at some point to have to take the stand
12 much like I am here.

13 Therefore, their review went to almost preparing
14 themselves for the eventual litigation.

15 Q Excuse me. Mr. McCaffrey, let me ask my question
16 again, and I would like you to try to answer my question.

17 Your statement, sir, is that LILCO without
18 technical justification was consistently held by the staff
19 to a different standard than other plants. I would like
20 you to identify for me what standard it is that you meant
21 in this sentence that was different for LILCO than from
22 any other plants and to which LILCO was held during the
23 time period 1976 to 1979 without a technical justification
24 by the NRC staff.

25 Can you answer that question?

Sim 15-6

1 A Yes. What I was speaking to there was that
2 the staff in the course of their review would ask for more
3 questions from LILCO. LILCO would at times provide alter-
4 native technical arguments for compliance with a regulatory
5 issue. Where we felt we had a strong basis for that, the
6 staff was less inclined to accept alternative approaches.

7 We saw in that time period additional review
8 questions which stemmed from intervenor contentions which
9 were added to the review process.

10 So it is not a matter of adding a new standard.
11 What I am talking about is adding new criteria or a new
12 burden of proof that the staff wanted from LILCO and then
13 would have asked for a plant that was not heavily contested.

14 And the reason for that is that if a utility
15 came in and offered an alternative to a standard regulatory
16 means of complying with a technical requirement, the staff
17 would have been more inclined to have the utility go down
18 the normal road rather than providing alternative technical
19 justification which then potentially could become the
20 subject of litigation in the future and then had to be
21 defended on its own.

22 So they were more inclined to have LILCO follow
23 the standard review practices, if you will.

24 Q Now I take it from that answer, Mr. McCaffrey,
25

Sim 15-7

1 that these things you mentioned that the staff, in your
2 view, would ask more questions or would do additional review
3 or was I believe you said less inclined to accept alternative
4 approaches, and I am not sure I listed everything you said,
5 but in your answer I take it that it is your view that
6 those activities by the staff were without technical
7 justification; is that correct?

8 A In our judgement that is correct.

9 Q What did you mean by "our judgment"? Is that
10 your opinion, Mr. McCaffrey?

11 A The Long Island Lighting Company. Since I was
12 responsible for the licensing program, it was the company's
13 position that we were held to a different standard.

14 Q Is that your opinion, Mr. McCaffrey?

15 A Yes.

16 Q Now I am not quite sure I have yet gotten an
17 answer to my question which was the standard that you believe
18 was different than the standard that you believe other
19 plants were held to during this time period.

20 Are you saying that the standard held LILCO to a
21 standard that violated the regulatory requirements, whereas
22 other plants were held to a standard which was in conformance
23 with regulatory requirements?

24 A No.

25 Q Well, can you tell me what the difference in

Sim 15-8

1 standard was, or can you define for me what the standard
2 is that you are referring to that was different and without
3 technical justification in your view?

4 A The standard was generally the burden of proof
5 upon the lighting company to make its case, providing
6 technical justification for its positions and we were firmly
7 convinced in this period that the burden of proof we were
8 held to and the conformance to perhaps the normal process
9 for compliance with the regulatory guide was different and
10 therefore the staff was less inclined to want to listen
11 to LILCO's arguments because those arguments in the future
12 potentially would be subject to more investigation through
13 litigation perhaps.

14 Q Now I take it that this opinion of yours that
15 you just expressed was based upon the fact that the staff
16 rejected some of the alternative approaches LILCO proposed
17 or didn't accept some of the answers without asking
18 additional questions; is that correct?

19 A Yes. Again, what we are talking about here is
20 the period '76 to '79. What our position is is that the
21 staff recognized they were in a heavily contested case
22 looking toward litigation and the type of review they did
23 was different for this plant than what we had done for
24 a non-contested plant. Unless the review for the non-contested
25 plant met the regulatory requirements, they just increased

Sim 15-9

1 the burden of proof for LILCO.

2 Q And that increase in the burden of proof that
3 in your opinion was present during this time period was
4 without any technical justification on the part of the
5 staff, right?

6 A That is my view. I can vividly recall an issue
7 having to do with what is called steam bypass, which is
8 a technical issue about steam and a potential loss-of-coolant
9 accident pressurizing the primary containment drywell area
10 and whether there will be any bypass to the wetwell air
11 space and the testing requirements that would be associated
12 with that during the operating phase of the plant to demon-
13 strate the ability of the seals around that floor to with-
14 stand such a LOCA condition.

15 The company made technical arguments for reducing
16 the testing requirements. We believed time and time again
17 at review meetings it was supportable, but we found the
18 staff not inclined to want to go with that approach. I think
19 that was affected by the intervention process.

20 JUDGE MILLER: You think what?

21 THE WITNESS: I think that was affected by the
22 intervention process.

23 JUDGE MILLER: You may complete your answer.

24 THE WITNESS: Yes. I would like to add to that
25 that I don't believe this is just LILCO's view on this point.

Sim 15-10

1 I. I can ---

2 JUDGE MILLER: Well, wait a minute. You are
3 being asked now about your testimony, is your view as
4 a representative of LILCO as well as I suppose individually
5 and professionally, and that is as far as the question
6 has gone so far.

7 BY MS. LETSCHE:

8 Q Now, Mr. McCaffrey, during this time period,
9 was LILCO represented by counsel in connection with this
10 prehearing process you are describing?

11 A Yes.

12 Q And did LILCO object to these non-justified
13 activities by the staff during this time period?

14 A Yes.

15 Q And did you file legal objections, or did your
16 counsel on behalf of LILCO file legal objections?

17 A No.

18 Q So you didn't set forth at that point your view
19 or the company's view that the activity of the staff was
20 without technical justification, correct?

21 A What you have to understand is ---

22 Q Could you answer my question, please?

23 JUDGE MILLER: Well, let him answer it.

24 THE WITNESS: What you have to understand is
25 the regulatory process. What the staff wants in the course

Sim 15-11 1

2 of doing their review to establish the safety evaluation
3 report, which had to come out, is generally something you
4 have to go along with. You don't have much recourse. You
5 can appeal it at management levels and you can have your
6 vice president call up Mr. Denton and say we disagree with
7 such a thing. We have voiced such things at the management
8 level.

9 It is not the sort of thing that one files a
10 legal brief and says we object to what you are doing here
11 in this review process.

12 Q And did you do any of those things? Did your
13 management go to somebody higher up in the NRC staff?

14 A Yes.

15 Q You appealed, for instance, to the Director of
16 NRR at this time during '76 to '79?

17 A In '76 to '79 people like Mr. Wafford and Mr. Burke
18 the Project Manager, and Mr. Wafford was the Vice President,
19 would have carried on such discussions.

20 Q Well, let me just clarify. You said that you
21 believe these people would have. Do you know whether or
22 not those actions were in fact taken by LILCO?

23 A Yes. As I have stated in my background informa-
24 tion when I began this testimony, I was the Project Licensing
25 Engineer. My involvement in the licensing process goes back
to late 1975. So it encompasses this period of time.

Sim 15-12

1 Q Okay. Now when these requests or appeals or
2 whatever we want to call them were made by LILCO management,
3 for instance, to the Director of NRR, which you have just
4 referenced I believe, what was the response?

5 A Well, what I said was the Director of NRR or
6 other people below him would have been appropriate points
7 of contact for such appeals.

8 That is the norm in this business, that if one
9 thinks the view process has gone awry or disagrees on a staff
10 viewpoint, one has one's management organization take it
11 up with the appropriate level. It doesn't necessarily have
12 to be with the Director of NRR. It could be strictly at the
13 Project Manager level.

14 Q Let's get a little more precise here. I think
15 we are both talking in generalities.

16 What objections are you aware of during the
17 period of 1976 to 1979 that were made by LILCO concerning
18 actions by the staff that LILCO believed were without
19 technical justification?

20 A The steam bypass issue would be one, and those
21 are documented in LILCO letters to the Commission as well.

22 Q Any others?

23 A I don't recall.

24 Q Who is it who on behalf of LILCO objected during
25 this period to the staff's actions on the steam bypass issue?

Sim 15-13

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A Those objections at a minimum are contained in meetings between LILCO and the NRC staff. When LILCO had its technical consultants from Stone and Webster come down and argue the case on numerous occasions, the steam bypass issue was contained in letters to the NRC. I don't personally recall what management level would have argued that at that point in time.

The Project Manager would probably have signed out such a letter to the Commission.

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#16-1-SueT

Q But you don't really know how any of that was handled; is that right?

A I didn't say I didn't know how it was handled. It would have been handled by S&RC letters and by the project manager or the vice-president talking to the staff.

Q Okay. So, you are speculating that it would have been one -- in your opinion, it probably would have been one of those individuals; is that right?

JUDGE MILLER: I think we are getting our terminology a little sharpened. You don't have to accuse him of speculating. He is giving his best judgment and his memory.

Now, I don't think you need to characterize one way or the other. I am going to strike the word "speculating."

Go ahead.

WITNESS MC CAFFREY: I'm not sure, was there a question here?

MS. LETSCHE: I'm going to rephrase the question.

BY MS. LETSCHE: (Continuing)

Q Am I correct, based on your prior answers, that those individuals you mentioned probably would have participated in these meetings and preparation of letters? That that is your best estimate at this time of who did that?

A On that particular issue we are talking about, yes. And I personally was involved. I was the licensing

#16-2-SueT 1

engineer at that point in time.

2

Q Okay. Now, who was this objection or appeal, whatever you want to call it, made to at the NRC on the steam by-pass issue?

3

4

A I don't recall. When one goes down to a Commission meeting like that, and we had numerous meetings on this particular subject, the project manager would bring in the various technical branches at the Commission. We might have had a branch chief there. I don't recall.

5

6

7

8

Those are the way one conducts a meeting.

9

10

Q Do you recall how the NRC resolved or dealt with the LILCO objection?

11

Did the NRC change its mind?

12

A No.

13

Q So the NRC didn't agree with you that this action, in fact, had been without technical justification; is that right?

14

15

A We continued to disagree.

16

Q Now, Mr. McCaffrey, was the steam by-pass issue that you have just discussed with me and the Staff's handling of that issue, a contested issue in the 1976 to 1979 time frame?

17

18

(Pause.)

19

A I don't recall. It's possible it might have been a sub-part to an overall Mark 2 containment issue concern.

20

21

22

23

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#16-3-SueT

Q Okay. Did --

2 A That's not the point about whether it necessarily
3 was a specific contention. The point is that --

4 JUDGE MILLER: Would you put that microphone a
5 little bit closer to you? We don't hear you very well.

6 WITNESS MC CAFFREY: Yes, sir. As I was saying,
7 it's not necessarily the case that I'm relating a contention
8 to a staff question. The fact that there was the presence
9 of having a contested proceeding provided the atmosphere
10 in which the Staff review process was completed. It af-
11 fected all elements of that review process. That's my
12 point.

13 BY MS. LETSCHE: (Continuing)

14 Q Now, it's true, isn't it, Mr. McCaffrey, that
15 around the 1979 time period there became known to the NRC,
16 as well as to the industry, that there were some substantial
17 problems with the March 2 containment; isn't that correct?

18 A The March 2 containment issue was identified
19 a number of years prior to 1979.

20 Q Had those problems or difficulties relating to
21 the March 2 containment been resolved as of 1979?

22 A No, they had not.

23 Q Now, you state in the next portion of -- let me
24 ask another question first.

25 Did the NRC Staff tell you during this time

#16-4-SueT

2 period, Mr. McCaffrey, that they were holding LILCO to
3 whatever it required of LILCO on the steam by-pass issue?
4 Let's continue to discuss that.

5 A Is that complete --

6 Q No. Even though they were not holding other
7 plants to that standard? Did the Staff tell you that?

8 A I don't recall that discussion specifically on
9 that point. No.

10 Q Did the Staff ever explain to you why it was
11 requiring of LILCO whatever it required of LILCO with
12 respect to that issue?

13 A Not in the course of discussing that issue. As
14 I said already, the point is -- and I have discussed it
15 with NRC personnel in that time frame and subsequently --
16 that the intervention on Shoreham affected the entire
17 process.

18 Q But you are not saying that with respect to that
19 one issue that we have been discussing that the Staff
20 indicated to you that they were -- that the Staff indicated
21 to you any reason that they were requiring of LILCO what
22 they did on that issue?

23 A I don't recall.

24 Q I take it, though, that it is your understanding,
25 or your belief, that the Staff didn't have any kind of a
legitimate reason to hold LILCO to those requirements; is

#16-5-Sue

that right?

2

JUDGE MILLER: You are characterizing again.

3

The reasons that he has described could be perfectly

4

legitimate to the Staff's point of view. It might or might

5

not be. You are putting one interpretation upon what the

6

witness has said.

7

MS. LETSCHE: Well, I certainly didn't mean

8

to.

9

JUDGE MILLER: Well, you used the word

10

"legitimate" and that has certain unpleasant connotations.

11

MS. LETSCHE: Well, I think Mr. McCaffrey has

12

certainly demonstrated that he is capable of responding if

13

he disagrees with a statement in the question.

14

JUDGE MILLER: He is capable, but are you

15

capable of asking a question which does not contain this

16

characterization?

17

That's really the issue at the moment.

18

BY MS. LETSCHE: (Continuing)

19

Q Mr. McCaffrey, I take it that it's your testimony

20

that on the steam by-pass issue, the Staff did not explain

21

to LILCO the reason it held LILCO to the standards that it

22

did, which in your view was without technical justification;

23

am I right?

24

MR. EARLEY: Asked and answered. I think the

25

witness --

#16-6-SueT

2 JUDGE MILLER: Yes, but we will give her one
3 more time.

4 WITNESS MC CAFFREY: The answer is, we had a
5 technical issue here with two opposing technical schools
6 of thought. The Staff had their position based upon their
7 technical assessment. We had our view based upon our
8 technical assessments.

9 We continued to object. We continued to believe
10 both that we were in compliance with the regulations. The
11 Staff simply didn't adopt that position.

12 What I have maintained is the intervention
13 atmosphere contributes to the Staff's lack of willingness
14 to accept an Applicant's different technical arguments
15 in cases.

16 BY MS. LETSCHE: (Continuing)

17 Q Now, you state that these standards to which
18 LILCO was held, or the standard on the steam by-pass issue
19 was different than that applied to other plants.

20 Are you referring there to -- well, what other
21 plants are you referring to in that portion of your testimony,
22 Mr. McCaffrey?

23 (Pause.)

24 A I was not aware of other plants that had the
25 type of an argument that LILCO came in with and, therefore,
what I'm saying here is I'm assuming that the other plants

#16-7-SueT

followed strictly the Staff's position on this matter.

2 Q So, you do not know that other plants were
3 held by the Staff to a different standard than was
4 LILCO, right?

5 A On this particular example that we have been
6 talking about? I'm not certain, that's correct.

7 Q Now, I asked you if you had any other examples
8 and you weren't able to give me any. Have you thought of
9 any others?

10 A No, I haven't.

11 Q Now, you go on to say that -- on the top of
12 Page 19, that the Staff in your opinion would require more
13 of LILCO than had been judged acceptable for other plants.
14 And I'm quoting, "All of this ultimately contributed to
15 delay in issuance of the SER."

16 When was the SER issued, Mr. McCaffrey?

17 A The SER was issued in April of 1981.

18 Q And when, in your opinion, should it have been
19 issued?

20 A LILCO was in the process of working feverishly
21 with the Staff during the period of 1978 to 1979 to issue
22 the safety evaluation report.

23 On numerous occasions we met with NRC management,
24 with our counsel, to urge the Staff to complete the review
25 process, to issue the SER, because the SER was the trigger

#16-8-SueT

2 to the ASLB proceedings. We were on notice that those
3 proceedings would be lengthy and, therefore, it was in
4 our best interest to getting the plant on line as soon as
5 possible that we begin the litigation so it could be ended
6 as soon as possible.

7 The SER was the key document. The SER had to
8 issue before the case could proceed. So, we were working
9 heavily in the '78-'79 time frame with the Staff to get
10 that out.

11 My point here is that that SER, I believe, could
12 have issued prior to the Three Mile Island incident in
13 early 1979 or late '78 had it not been for the effect of
14 the intervention process.

15 Q Now, that's your personal opinion; is that
16 correct?

17 A Yes.

18 Q Is it your belief that the Staff had available
19 to it in 1979, prior to the TMI accident in 1979, all the
20 information it had requested from LILCO that was necessary
21 to enable it to issue the SER?

22 A In order to issue an SER, the Staff doesn't
23 require all the information necessary to produce that
24 document. What the Staff does is, when they get the status
25 of the safety review down to a manageable level of outstanding
technical issues, they issue the SER. And the SER has in

#16-9-SueT

2 front of it, Section 1.7, a section that lists the outstand-
3 ing remaining items that have to be finalized. So, you
4 don't wait until a hundred percent of it is done.

5 I believe the Staff had sufficient information
6 in the late '78, very early '79 time period to issue a
7 safety evaluation report. Yes.

8 Q Now, setting aside the TMI related items that
9 came up after the TMI accident obviously, did the Staff
10 ever indicate to LILCO in late 1978 that it was satisfied
11 with the submittals made to date by LILCO on the issues
12 the Staff was then reviewing?

13 A The Staff never issues per se a statement to
14 the Applicant, we are satisfied with what we got. What you
15 have is a process where you get questions. You send in
16 answers and someday you get questions back. And you answer
17 the questions.

18 Unless you get questions back, you assume the
19 review process is proceeding smoothly. So, what was going
20 on in the '78, early '79 time frame was a process on a
21 day-by-day basis where the licensing manager, myself, and
22 the NRC project manager would be exchanging lists of
23 outstanding issues, who's got the ball, who is going to
24 submit what and what date so we can close the remaining
25 issues.

That's the process of completing the final stages

#16-10-Sue7

of the staff review.

2 Q Now, I would like to see if we can shorten this
3 a little bit, Mr. McCaffrey. Maybe you can answer my
4 question yes or no.

5 Isn't it true that when the April 1981 SER was
6 issued there were sixty-one open items separate and apart
7 from TMI related items?

8 A No.

9 Q How many were there?

10 A I believe the -- I don't have the document in
11 front of me. But what I believe is the sixty-one count
12 includes the item encompassing the TMI items.

13 Q So there were sixty, then; is that correct?

14 JUDGE MILLER: I think the witness is entitled
15 to see what you are interrogating on.

16 MS. LETSCHE: Let me hand the witness my copy
17 of the April 1981 Safety Evaluation Report, and in particular
18 to help you, Mr. McCaffrey, I would like to direct your
19 attention to Section 1.7 which you mentioned, entitled
20 "Outstanding Issues."

21 (The witness is handed the document.)

22 BY MS. LETSCHE: (Continuing)

23 Q And after you have had a chance to look at that
24 section, would you agree with me that there were --

25 JUDGE MILLER: Let him look at it first.

#16-11-SueT

(The witness is looking at document.)

2 WITNESS MC CAFFREY: I've read the document.

3 BY MS. LETSCHE: (Continuing)

4 Q Now, would you agree with me, Mr. McCaffrey,
5 looking at Section 1.7 in that April 1981 SER that at the
6 time that was issued there were sixty outstanding open
7 items, setting aside those related to TMI?

8 A Yes.

9 Q Now, I take it that it's your opinion that
10 despite the fact that as of 1981 there were still sixty
11 outstanding items in the Staff's view that the Staff none-
12 theless should have issued a safety evaluation report back
13 in 1978, at least a year and a half earlier than it did;
14 is that right?

15 A That's correct. It's my understanding from
16 speaking with NRC management that their goal is to typically
17 get the number of outstanding items down in the range of
18 fifty or so, sixty items, and then they are satisfied to
19 issue the SER.

20 Q And it's your --

21 A What you don't --

22 Q Excuse me, Mr. McCaffrey, let me ask the question
23 before you answer.

24 It's your testimony that as of 1978, the status
25 of open items was the same as it was in April 1981 when the

#16-12-SueT

SER was issued; is that right?

2 A Yes. I believe that was the case. And the
3 point I had before, which you don't see here, is the
4 generation of additional Staff questions for issues that
5 arose between the late 1978 time and April of 1981. And
6 what was going on was a process of closing many, many
7 items and, as in any staff, review new issues that would
8 emerge. So, it's tough to relate these sixty to what
9 sixty or so may have existed back in late 1978.

10 Q Well, is it your testimony, Mr. McCaffrey, that
11 the process that went on in the interim between 1978, when
12 you believe the SER should have been issued, and April 1981,
13 when it actually was, that what went on during that regulatory
14 process was without technical justification by the Staff?

15 (Pause.)

16 A What I'm saying is the Staff review process on
17 these issues continue to be effected by the intervention
18 process, and the burden of proof to LILCO was therefor
19 that much higher and it was more difficult for us to
20 finally wrap up a given issue and close it out with the
21 Staff.

22 Q You have said that several times now, Mr.
23 McCaffrey, but could you try to answer my question.

24 My question was, is it your opinion that what
25 happered during that time period, 1978, when you believe

#16-13-SudT

2 the SER should have been issued, and April 1981 when it
3 actually was issued, that the activities of the Staff
4 during the course of that time period and that regulatory
5 process were without technical justification?

6 Can you answer that yes or no?

7 A No, I cannot.

8 JUDGE MILLER: I think what you are not recognizing,
9 counsel, as the witness has testified several times
10 he regards the imposition of a higher standard or burden
11 on these matters upon LILCO than others, as he views it,
12 would in and of itself be without technical justification.

13 Now, that's what you two are arguing about. You
14 are never going to meet because you are going to get the
15 same answers to the same questions.

16 MS. LETSCHE: Well, Judge Miller, I think I'm
17 on a separate issue right now, which is the issuance or
18 the timing of the issuance of the SER.

19 BY MS. LETSCHE: (Continuing)

20 Q And I take it from your last answer, Ms. McCaffrey,
21 that it is not LILCO's contention that the Staff activities
22 between 1978 and 1981 were without technical justification;
23 is that right?

24 MR. EARLEY: Judge Miller, I object. The last
25 question was whether he could answer yes or no. not what
his opinion was. And he said no, he couldn't answer yes or

#16-14-SudT

no. Now, if she wants to go on and ask the next question,
she can do that.

2

3

MS. LETSCHE: Well, I just did.

4

JUDGE MILLER: The question is being asked and
he is not being restricted to yes or no.

5

6

MR. EARLEY: I think she was characterizing
his prior testimony. That's what I was objecting to.

7

8

WILLIAMS MC CAFFREY: Could I have the question
again?

9

10

MS. LETSCHE: Could I have that read back,
please?

11

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JUDGE MILLER: No. It takes -- well, under
this system, you can rephrase it.

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end #16 14

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1 Q Is it your testimony, Mr. McCaffrey, that
2 the activities of the Staff during the period 1978 when you
3 believe the SER should have been issued in April 1981 when
4 it was issued, were technically justified?

5 A Some yes, some no.

6 Q Why don't you identify for me the ones that you
7 believe were not technically justified?

8 A In large part on these items, I can't do that.
9 One that is specifically listed which we have been talking
10 at length about is steam bypass. That is listed as one of
11 these items. Just give me a moment, and I will give you
12 the reference.

13 This will be Item 26, page 1-8, steam suppression
14 pool bypass issue.

15 JUDGE MILLER: Pull that microphone a little
16 closer, would you please?

17 WITNESS McCaffrey: This would be item 26,
18 Suppression pool bypass, would be one example. I can't go
19 down and decide which ones the staff didn't have a technical
20 basis on.

21 BY MS. LETSCHE: (Continuing)

22 Q During the --

23 WITNESS McCaffrey: I would like to add one more
24 example since you are pressing me for it. Item 25, RCIC,
25 RCIC.

1 JUDGE MILLER: I can't hear you.

2 WITNESS McCaffrey: RCIC, the Reactor Core
3 Isolation Cooling System. This was an issue having to do
4 with switchover of the RCIC pump from the condensate storage
5 tank which is outside the reactor building, to the suppression
6 pool, which is in the primary containment. The issue here
7 is about whether the plant should have an automatic switch-
8 over feature, where when the condensate storage tank would
9 get to some level where the RCIC System has been used for
10 some accident mitigation, that when it gets down to a given
11 low level that it automatically switch over rather than
12 permitting it to be done through operator action with
13 suitable alarms in the control room.

14 We maintain that there was adequate time, an
15 adequate basis, adequate operator training to permit the
16 continuation of a manual switchover of the point of suction
17 from the condensate storage tank to the suppression pool,
18 rather than making it an automatic system.

19 There is another point where we disagreed.

20 BY MS. LETSCHE: (Continuing)

21 Q Did LILCO object to the Staff's handling of
22 this RCIC issue you just described during that time period
23 between 1978 and 1981, when the SCR was issued?

24 A Yes.

25 Q Who objected on behalf of the Company?

1 A I did, among others.

2 Q And who did you file your objection with?

3 A Our position was well documented in letters to
4 the Commission.

5 Q And --

6 A There was the subject of meetings in Bethesda.
7 What the Staff personnel -- just prior to the period of
8 issuance of the safety evaluation report in April of 1981,
9 the Company took up residence in Bethesda to work with the
10 Staff on a daily basis to provide this interaction on the
11 remaining technical issues to try to close them out.

12 So, this would have been the subject of discussions
13 at that point in time at least, and subsequently to it as
14 well.

15 Q Focusing on the RCIC issue which is what I am
16 asking you about right now, did the Staff agree with LILCO
17 that its activities were without technical justification
18 during this time period as a result of your objection?

19 A I guess they didn't agree, because they required
20 us to put in an automatic switchover system.

21 Q And did LILCO also object during this period to
22 the Staff's handling of the steam bypass issue?

23 A The answer is yes. I just can't recall when we
24 finally gave up our opposition to it.

25 Q But you gave up because the Staff was not changing

1 its mind, isn't that right?

2 A Actually, when one knocks one's head against
3 the wall long enough, you back off.

4 Q Now, do you know whether the RCIC issue that
5 you just mentioned was the subject of an Intervener contention
6 during the period 1976 to 1979?

7 A '76 to '79?

8 Q Yes.

9 A I doubt it.

10 Q Now, you mention at the top of page 20, that
11 Suffolk County and other Interveners filed contentions on
12 hundreds of issues.

13 And then you talk about discovery and responses
14 to those contentions that were prepared by LILCO.

15 Now, these contentions that you are referencing
16 here were filed by the Interveners in the licensing proceeding,
17 isn't that correct?

18 A That is correct.

19 Q And they were filed pursuant to the regulations
20 that govern the conduct of those proceedings, weren't they?

21 A I believe so.

22 Q And that proceeding was being conducted, presided
23 over by an Atomic Safety and Licensing Board, isn't that
24 right?

25 A That is correct.

1 Q Now, these hundreds of contentions that you
2 discuss at the top of page 20 were admitted for purposes
3 of litigation by then ten presiding Atomic Safety and
4 Licensing Board, isn't that right?

5 A In the period 1977, roughly, when the County
6 and the Shoreham Opponents Coalition were active interveners,
7 there were numerous contentions filed in the case. Through
8 the course of discovery, negotiations, motions, et cetera,
9 various contentions were stricken, various contentions were
10 removed by the Interveners. Various contentions were
11 consolidated for purposes of litigation.

12 Q Let me be a little more precise, Mr. McCaffrey,
13 because maybe we were misunderstanding each other. I am
14 referring to your testimony in the top paragraph on page 20,
15 where you reference in the first sentence contentions on
16 hundreds of issues, and then you discuss the response by
17 LILCO to document requests and interrogatories, responses
18 to the contentions, and the development of materials related
19 to motions for summary disposition.

20 Now, isn't it true that the contentions as to
21 which there was this kind of formal discovery conducted, and
22 as to which LILCO filed or intended to file motions for
23 summary disposition, that those contentions had been admitted
24 for litigation by the then presiding Atomic Safety and Licensing
25 Board?

1 A I am not sure which contentions you are referring
2 to. When I speak to hundreds of contentions, I am speaking
3 to contentions including the sub-parts, which become hundreds
4 of issues to be litigated. That is what I mean by hundreds
5 of contentions.

6 Q Well, what I am curious about here, Mr. McCaffrey,
7 is not what I understand to be hundreds of contentions. I am
8 talking about your statement here which says: The Interveners
9 filed contentions on hundreds of issues.

10 I am not really concerned with the numbers of
11 contentions. My question is: The contentions that you are
12 discussing, formal discovery concerning, and summary disposition
13 motions concerning, were admitted for litigation by the then
14 presiding Atomic Safety and Licensing Board, isn't that
15 true?

16 A That is correct.

17 Q Now, are you suggesting that the Atomic Safety
18 and Licensing Board improperly admitted those contentions
19 for litigation?

20 A No, I don't think they improperly admitted them.
21 I would maintain that the amount of leeway that the Board
22 granted the Interveners was pretty wide in permitting a
23 contention to be admitted, but it complied with the rules,
24 I suppose.

25 Q LILCO didn't appeal or object to the admission of

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1 those contentions, did it?

2 MR. EARLEY: Objection. I think we are asking
3 the witness about what legal steps LILCO took. I will
4 remind counsel that interlocutory appeals of contentions
5 that are admitted are not permitted by the regulations.
6 I don't see the point of going into this particular --
7 whether LILCO tried to circumvent the NRCs regulations.

8 JUDGE MILLER: Well, I think we will sustain
9 the objection. The matter has been covered. I think there
10 is enough on the record. Objection is sustained.

11 BY MS. LETSCHE: (Continuing)

12 Q Mr. McCaffrey, the contentions that you were
13 discussing here were in the health and safety portion of the
14 hearings, is that correct? They were on health and safety
15 issues?

16 A No, not necessarily.

17 Q Did they also cover environmental issues?

18 A Yes.

19 Q There has been a partial, initial decision
20 rendered on a large number of the health and safety and
21 environmental issues in this case, isn't that correct?

22 A I don't recall that the partial, initial decision
23 rendered an opinion on the environmental issues. They were
24 all dismissed through the summary disposition and Board
25 question process, and never got to litigation.

1 So, the partial, initial decision that came
2 out in September of 1983 addressed the safety issues, and
3 it was a Board decision on the various safety issues that
4 were litigated.

5 Q Now, after that partial initial decision on the
6 health and safety issues came out in 1983, did LILCO appeal
7 the decisions to admit any of the contentions in that
8 hearing?

9 MR. EARLEY: Objection. I believe the NRC --
10 again, she is asking about things that are not provided
11 for in the NRC's regulations, since LILCO had won on the
12 substantive issues, I don't believe they are permitted
13 to appeal whether the contention was admitted.

14 JUDGE MILLER: Sustained.

15 BY MS. LETSCHE: (Continuing)

16 Q Mr. McCaffrey, on page 20, in the paragraph
17 beginning: The period from 1979 to 1980 -- 1981, I am sorry.
18 You reference in the last sentence there that this period
19 also saw the development of new contentions filed by SOC,
20 which Shoreham Opponents Coalition, correct, and Suffolk
21 County, on matters related to Three Mile Island.

22 Do you see that sentence there?

23 A Yes, I do.

24 Q Now, isn't it true that the TMI action plan
25 which was issued subsequent to the Three Mile Island

1 accident, identified several issues in matters that needed
2 to be evaluated by the NRC staff as a result of the lessons
3 learned from the Three Mile Island accident?

4 A Which document are you referring to? Do you
5 have a NUREG number, perhaps?

6 Q No, I don't have it here with me. I am referring
7 to the TMI Action Plan. Are you not familiar with that
8 document, NUREG 0737.

9 A I am familiar with NUREG 0737.

10 Q And didn't that document identify a large number
11 of issues and matters to be evaluated by the NRC Staff as
12 a result of lessons learned from the Three Mile Island
13 accident?

14 A Yes.

15 Q You are not suggesting, are you, that the
16 contentions that were filed on matters related to the
17 Three Mile Island accident were improperly admitted by
18 the licensing board that was sitting at the time those
19 contentions were submitted, are you?

20 A No.

21 Q Now, at the bottom of page 21 of your testimony,
22 you referenced massive formal discovery efforts, and you
23 talk about that subject again, continuing over to page 22.

24 Now, it is true, is it not, that the discovery
25 that took place in 1982, and we will talk about the first

1 half of 1982, was conducted pursuant to an Order by the
2 then sitting ASLB governing the conduct of that discovery?

3 A That is correct.

4 Q You are not suggesting, are you, that the
5 discovery that was conducted during that time was not
6 conducted in accordance with the NRC regulations, are you?

7 A No. What I am trying to show here is merely
8 to put in perspective the level of intervention in the
9 case, that discovery while it may have been founded in
10 regulatory practice was, nonetheless, extensive, massive,
11 was a heavy burden to the Company. We produced thousands
12 upon thousands of documents. That is the point of the
13 testimony.

14 Q Yes. Now, Mr. McCaffrey, I think your testimony
15 makes that point. My question is this: Did LILCO object
16 at the time to the -- I believe your word, and I don't
17 mean to characterize -- but my recollection is that it was
18 massive discovery that took place at that point.

19 Did LILCO object at the time to that discovery?
20 Do you know?

21 A Yes, and we object frequently.

22 Q And were your objections sustained by the
23 licensing board?

24 A Sometimes yes; sometimes, no.

25 Q But in any event, you used the regulatory process

1 and the rules that governed the conduct of that process to
2 protect your rights in that hearing -- I mean that discovery
3 process, isn't that right?

4 A That is correct.

5 Q And you are not suggesting, are you, that the
6 Atomic Safety Licensing Board which ruled on the various
7 objections that were made by LILCO during this discovery
8 process erred or somehow improperly ruled on those
9 objections, are you?

10 A No. I simply maintain that they have provided
11 the Interveners tremendous leeway.

12 Q Are you suggesting that the provision of leeway,
13 as you term it, by the licensing board is in violation of
14 the NRC's regulations?

15 A No.

16 Q Are you suggesting that that provision of leeway
17 is in any way improper?

18 A No. What I will maintain is that just as the
19 NRC Staff has been affected by the intervention process, so
20 has the Board, and the Board wanted to make every effort
21 to assure that the Interveners were provided every possible
22 avenue to create their case.

23 Q And is it your opinion that that is wrong?

24 A No. It is simply burdensome to LILCO.

25 Q And I take it that your --

1 A And in addition, extends the litigation process.

2 Q I take it, Mr. McCaffrey, that your opinion
3 concerning the reasons that the ASLB acted and ruled as it
4 did on LILCO's objections to the discovery process is just
5 that, it is your opinion. You don't have any other
6 information upon which to base that opinion, do you?

7 A No. It is my opinion.

8 End 17.
9 Mary fols.

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Sim 18-1 1

2 Q In other words, no members of any ASLB's have
3 told you why it is they ruled the way they did on LILCO's
4 objections, have they?

5 JUDGE MILLER: Now isn't that kind of a silly
6 question?

7 MS. LETSCHE: I think it is an appropriate question
8 in light of this witness' testimony.

9 JUDGE MILLER: I think it is inappropriate and I
10 strike it, and I direct counsel to stop making remarks of
11 that kind which do have some implications regarding the
12 members of the Atomic Safety and Licensing Board, this and
13 others.

14 MS. LETSCHE: Judge Miller ---

15 JUDGE MILLER: If you want to be heard on that
16 in chambers, you may be heard, but I am not going to have
17 any innuendoes flown here now, counsel.

18 MS. LETSCHE: Judge Miller, if I might, the
19 question was requesting the basis for Mr. McCaffrey's
20 opinion, and certainly no innuendo was included.

21 JUDGE MILLER: It was asking whether or not
22 any member of the Atomic Safety and Licensing Board had
23 indicated to him why it acted improperly.

24 MS. LETSCHE: I beg to differ. I don't think
25 that was my question. My question was ---

JUDGE MILLER: You may differ, but the record

Sim 18-2

1 will show.

2 You are directed to proceed now and to desist
3 from this line of questioning.

4 BY MS. LETSCHE:

5 Q Mr. McCaffrey, you particular reference on page
6 22 a request for quality assurance documents. Do you see
7 that reference?

8 A Yes.

9 Q And you discuss that as an example, I believe,
10 of the county having, to use your words, "used LILCO's
11 filing of testimony as a pretext for additional document
12 requests."

13 JUDGE MILLER: You left out the routinely part
14 up above it. "The County has routinely used LILCO's filing
15 of testimony as a pretext for additional document requests"
16 is the entire sentence.

17 MS. LETSCHE: That is correct. I started my
18 quotation with the word "used."

19 JUDGE MILLER: Well, I backed it up a little.
20 Proceed.

21 BY MS. LETSCHE:

22 Q Mr. McCaffrey, is it your testimony that the
23 county's request for documents following the filing of
24 testimony by LILCO is not permitted by the NRC's regulations?

25 A No.

Sim 18-3

1 Q And I take it it is not your testimony either
2 that the ASLB's rulings in granting the county's request
3 for documents following the filing of testimony by LILCO
4 is not in violation of the NRC's regulations; is that right?

5 A That is correct.

6 Q And isn't it true that this particular request
7 that you reference here for quality assurance documents in
8 fact was in large part either acceded to by LILCO or granted
9 by the Atomic Safety and Licensing Board?

10 A The purpose of referring to the transcript pages
11 here I have read ---

12 MS. LETSCHE: Excuse me.

13 Judge Miller, I wonder if the witness could be
14 directed to answer my question?

15 JUDGE MILLER: Well, he is. He apparently is
16 trying to answer you because he is pointing out to you
17 a portion, as I understand it, the transcript.

18 THE WITNESS: What I wanted to point out is
19 the transcript pages which are cited there which I have
20 read provide the company's arguments as to why we opposed
21 the discovery request and indeed provide the resolution
22 of the outcome of the documents that had to be handed over
23 subsequent to the county's request for additional documents
24 and it is fully contained in those pages. That is my point.
25

Sim 18-4

BY MS. LETSCHE:

1
2 Q My question, Mr. McCaffrey, is or was isn't it
3 true that the requests that are discussed in those transcript
4 pages you cite were largely either acceded to by LILCO
5 or granted by the Atomic Safety and Licensing Board?

6 A I don't recall the exact box score. As I recall
7 from my reading of it, the company agreed to produce certain
8 documents and the Board directed certain documents to be
9 produced. I don't recall the exact box score.

10 Q Now isn't it also true, Mr. McCaffrey, that LILCO
11 routinely uses Suffolk County's filing of testimony as a
12 pretext for additional document requests?

13 A No, I don't believe so. Generally what I have
14 found over the years, Judge Miller, is that when one gets
15 contentions they are broad and they are general and one
16 generally doesn't know what the core of the intervenor's
17 contention is. And that when one only gets down to the
18 testimony does one really see what the facts are that support
19 it.

20 So very often we have to then figure out the
21 case based upon the testimony that finally comes in.

22 Q It is true, is it not, Mr. McCaffrey, that LILCO
23 has on many occasions during this licensing proceeding in
24 which you have been involved for many years, as I understand
25 it, that on many occasions LILCO has requested documents

Sim 18-5

1 following its receipt of testimony by Suffolk County?

2 Can you answer that yes or no for me?

3 A No.

4 Q You are unable to answer that question?

5 A As to yes or no.

6 JUDGE MILLER: He is unable to answer yes or
7 no to your question ---

8 MS. LETSCHE: I was about to finish my sentence,
9 Judge Miller.

10 JUDGE MILLER: Well, you may be about to finish
11 it or not, but he has already said "No" when you asked him
12 if he could answer it yes or no. Now that should end that
13 question.

14 BY MS. LETSCHE:

15 Q Mr. McCaffrey, in your opinion, when LILCO
16 requests documents following the receipt of testimony filed
17 by another party in the proceeding, that is a proper request
18 on the part of LILCO, isn't it?

19 A I would imagine if we had not been provided
20 with the facts supporting the testimony prior to the receipt
21 of testimony it would be appropriate to ask for the facts
22 afterwards.

23 Q Now you are not saying, are you, that if the
24 County were in the same position that it needed documents
25 containing facts that it had not been provided before, that

Sim 18-6

1 its request for such documents would not also be a proper
2 action?

3 A With that qualifier, it could be indeed proper.
4 However, my view is that LILCO has always been aboveboard
5 in responding to discovery and we have provided some much
6 information that the county should have been in large part
7 fully on notice as to the facts. Therefore, when our
8 testimony finally came in, they should have been little need
9 to ask for additional documents.

10 Q Now that is your opinion of what the county should
11 or should not have done in the past; isn't that right?
12 That is your personal opinion?

13 JUDGE MILLER: Well, that is his opinion, whether
14 it is personal or professional.

15 Why do you tediously keep saying is that what
16 you said, did you say it, is that your personal opinion?
17 You are making this unnecessarily drawn out.

18 Why don't you just proceed along and ask the
19 information that you think you need for cross-examination
20 and not get involved in fencing.

21 BY MS. LETSCHE:

22 Q Mr. McCaffrey, the last statement that you made
23 in answer to my prior question concerning what the county
24 should or should not do, is your opinion; isn't that correct?

25 A Yes.

Sim 18-7

1 Q Now, Mr. McCaffrey, I would like to go back
2 for a minute, if I could, to the area of your testimony back
3 on pages 18 and 19 that we discussed concerning LILCO's
4 belief that without technical justification LILCO was
5 consistently hold by the staff to a different standard than
6 other plants. That is your testimony on page 18.

7 JUDGE MILLER: Now don't be repetitious. We
8 covered this interminably and we don't want to have
9 reduntant or repetitious questions and answers and so forth.

10 MS. LETSCHE: I don't intend to do that,
11 Judge Miller.

12 JUDGE MILLER: Well, you have gone back to that
13 same question this must be the 12th time with the same
14 statement contained in there, the different standard.

15 MS. LETSCHE: I haven't asked a question yet,
16 Judge Miller. If you would permit me to ask it, you might
17 find out that in fact I am not going to repeat.

18 JUDGE MILLER: I would like to find out that
19 when you preface your questions by a statement and the
20 same statement has been repeated 12 times, that gets
21 repetitious.

22 Now if you insist on asking a wind-up question
23 like at a Presidential press conference, ask something
24 else and get some other quotation to give it a little
25 variety at least.

Sim 18-8 1

Now proceed and let's not be repetitious.

2

MS. LETSCHE: I would like to have marked as

3

Suffolk County Exhibit LP-19 a document entitled "SALP NRR

4

Performance Evaluation," a two-page document.

5

JUDGE MILLER: It may be marked.

6

(The document referred to was

7

marked Suffolk County Exhibit

8

LP-19 for identification.)

9

BY MS. LETSCHE:

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10

Q Now, Mr. McCaffrey, in your position with LILCO

11

during the period 1980 and 1981 you were involved in meetings

12

involving the NRC and LILCO on regulatory matters; isn't

13

that correct?

14

A That is correct.

15

Q And during that period did you participate in

16

meetings related to the systematic assessment of licensee

17

performance program referred to as the SALP program I

18

believe?

19

A Meetings with whom?

20

Q With the NRC staff?

21

A Yes.

22

Q And I believe you stated earlier that during the

23

period of time of 1976 to 1981 that you personally partici-

24

pated in several meetings with the NRC staff members con-

25

cerning their review of the Shoreham plant or the standards

Sim 18-9

1 to which they were holding LILCO in the course of that
2 review; isn't that right?

3 A I didn't call a meeting strictly to talk about
4 standards. We had meetings, numerous meetings, and sometimes
5 we talked about the staff review on a given issue.

6 Q All right. Now Jerry Wilson was the NRC
7 Project Manager during the period of 1980 to 1981; isn't
8 that correct?

9 A I believe that is correct.

10 Q Now you are familiar with this document which
11 has been marked as Suffolk County Exhibit LP-19, aren't
12 you, Mr. McCaffrey?

13 A I am familiar with the SALP report. I haven't
14 had a chance to look through these two pages yet.

15 MS. LETSCHE: Well why don't you take a look
16 at them for me.

17 (Pause while the witness reviews the document.)

18 THE WITNESS: I am ready. But certainly this
19 document is only a portion of the complete SALP report.

20 BY MS. LETSCHE:

21 Q All right. But you are familiar with this
22 document, aren't you, Mr. McCaffrey?

23 A Yes.

24 Q And this document sets forth, does it not, the
25 NRR performance evaluation in a summary fashion prepared

Sim 18-10

1 by Mr. Wilson, the Project Manager for the appraisal period
2 July 1, 1980 to June 30, 1981 for LILCO with respect to the
3 Shoreham plant?

4 A It addresses that period.

5 Q Now isn't it true that in this staff evaluation
6 the staff stated that LILCO's responses and submittals are
7 below average. "The FSAR and amendments provide insufficient
8 information to provide a clear understanding of plant
9 design. The applicant's answers to generic letters and
10 requests for additional information are usually not respon-
11 sive to staff concerns."

12 That was the statement made by Mr. Wilson in
13 this evaluation; isn't that true?

14 A That is apparently what he said.

15 Q And in addition to that, also rating the perfor-
16 mance of LILCO during this time period in paragraph (b)
17 Mr. Wilson states, does he not, that "During the latter
18 portion of this appraisal period the applicant put in a
19 great deal of effort in responding to open items in the
20 Shoreham SER and the responses usually met our time schedules.
21 However, the applicant's responses were frequently inadequate.
22 Therefore, each open item required several meetings, phone
23 conversations and letters to achieve resolution."

24 That was Mr. Wilson's statement in this document,
25 wasn't it?

Sim 18-11

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A That is his document and we disagree.

Q Now in addition, Mr. Wilson noted in paragraph (e) in which he is discussing the conduct of meetings with NRR that "The applicant takes an active role in meetings although they are frequently recalcitrant," isn't that correct, that is what Mr. Wilson states?

A Yes, and I believe I can explain the meaning of that and the previous comments.

Q Well, perhaps you can do that when your counsel asks you on redirect.

Mr. McCaffrey, it is also true, is it not, that Mr. Wilson stated with respect to long-standing open items, and I quote, "The applicant had many long-standing open items throughout this appraisal period. Because the applicant had not neared completion of construction, they opposed many staff positions in the hope that the staff would back off."?

A That is what it says.

Q In addition, with respect to specific issues, LILCO's performance on specific issues, Mr. Wilson stated, did he not, that "The applicant has not kept the FSAR up to date and representative of the actual plant. There is poor control of construction activities resulting in every-increasing discrepancies between the plant, the design and the FSAR. The applicant continues to generate E&DCRs on

Sim 18-12 1

2 the construction of the Shoreham facility which now total
3 35,000. This is causing the potential for an ever-widening
4 gap between the actual plant and the analyzed and approved
5 design. I doubt that either Stone and Webster or LILCO
6 fully understand the capability of the facility with such
7 a large discrepancy beteen the plant and the A/E approved
8 design."

9 Mr. Wilson included that in his evaluation also,
10 didn't he?

11 MR. EARLEY: Judge Miller, if I may object here.
12 The issue of E&DCRs was litigated before the Atomic Safety
13 and Licensing Board, Judge Brenner.

14 This is only a piece of that litigation. The
15 Board ultimately found that the program with respect to
16 E&DCRs was acceptable and adequate.

17 I think if we get into this here, this particular
18 piece taken out of context, I think it is unnecessary
19 because then it necessitates getting into that whole
20 litigation again.

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JUDGE MILLER: Well, you will be given a reasonable opportunity. Overruled.

It's a little late anyway. It has already been read into the record.

BY MS. LETSCHE: (Continuing)

Q Mr. Wilson made that statement in his evaluation, did he not, Mr. McCaffrey?

A He apparently made that statement in his evaluation and, as I said, I have an opinion but I guess I won't be permitted to respond at this point.

Q Finally, in evaluating notable strengths and weaknesses, Mr. Wilson stated, did he not, "This is an active and technically knowledgeable Applicant; however, they lack BWR operating experience and they are frequently recalcitrant."

A Those are in the document.

Q Now, is it your testimony, Mr. McCaffrey, that Mr. Wilson never expressed the opinions that are set forth in this document that we have just been discussing to LILCO during this time period up to June 30, 1981 or thereafter?

Can you answer that question yes or no?

A Yes. The question was that he made these statements. I believe he made these statements. I don't see the relevance to good faith effort. Nonetheless, those

#19-2-SueT 1

statements are there.

2 MS. LETSCHE: Judge Miller, I don't know if
3 you intend to continue further today. This is a logical
4 point for me to break in my cross-examination. I note
5 it's a little after 5 and --

6 JUDGE MILLER: We will take a ten minute break.
7 I want to finish this witness today. We will take a
8 ten minute break.

9 (Whereupon, the hearing is recessed at 4:58 p.m.,
10 to reconvene at 5:10 p.m., this same day.)

11 JUDGE MILLER: You may proceed.

12 MS. LETSCHE: Judge Miller, I would like at
13 this time to renew my motion to strike and be permitted to
14 explain the grounds for my motion.

15 JUDGE MILLER: Are you completely finished with
16 your cross-examination of this segment?

17 MS. LETSCHE: No, Judge Miller, I have not. But
18 I would like to --

19 JUDGE MILLER: Well, we have asked you to
20 complete your cross-examination which is, by leave, out
21 of order for reasons advanced, complete that and then we
22 will permit you to make all the motions you wish.

23 But we want to have the cross-examination and
24 the redirect and whatever completed. We will then entertain
25 whatever motions you care to make.

#19-3-SuqT

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MS. LETSCHE: I understand the Board's ruling.
If I might make one statement --

JUDGE MILLER: Well, if you understand it, it's
clear. You are directed to proceed with cross-examination
or else terminate it. That's crystal clear.

MS. LETSCHE: And the Board is telling me that
I may not state the basis for my motion to strike at
this time; is that correct?

JUDGE MILLER: At this time, as we told you
before, we let you go out of order on cross. Now, we want
to have this witness' cross-examination and everything
concluded at which time you will be permitted to argue as
fully as you want whatever motions you wish.

MS. LETSCHE: All right. The point I wanted to
make is that the cross-examination --

JUDGE MILLER: Proceed.

MS. LETSCHE: -- will be lengthy --

JUDGE MILLER: Now, you are getting contumacious,
young lady. I told you to proceed. I don't want any more
argument. I want you either to ask this witness whatever
questions you have on cross, or you terminate it or I will
terminate it. Now, proceed.

MS. LETSCHE: I will proceed, Judge Miller. I
would like --

JUDGE MILLER: Now, I don't want any argument --

#19-4-SueT

2 MS. LETSCHE: -- to object to your referring
to me as young lady on this record.

3 JUDGE MILLER: Well, I will strike the young
4 lady. If you regard that as offensive, I will strike
5 the young lady. What do you wish me to call you? I will
6 do anything that you want on that.

7 How do you wish to be designated, counsel?

8 MS. LETSCHE: Counsel is perfectly fine, thank
9 you.

10 JUDGE MILLER: All right. Then, I will address
11 you as counsel.

12 Now, proceed, counsel, with no more arguments
13 and no more demonstrations.

14 BY MS. LETSCHE: (Continuing)

15 Q Mr. McCaffrey, I would like to direct your
16 attention to your testimony on Page 26. You state at the
17 top of that page that the County has attempted to litigate
18 the safety of Shoreham in other arenas. And you discuss
19 the Marburger Commission appointed by Governor Cuomo.

20 Could you explain to me, Mr. McCaffrey, the
21 relationship between the -- what happened at the Marburger
22 Commission hearings and the LILCO request for an exemption
23 from compliance with GDC-17?

24 A What I'm trying to demonstrate here in support
25 of LILCO's application for an exemption from GDC-17 are

#19-5-SueT 1

2 some of the other factors that are contributed to the drain
3 upon LILCO's resources over the years. And that is, in
4 the Governor's Shoreham Commission, as it was termed,
5 we saw the County routinely attending the sessions, provid-
6 ing testimony before the Commission on some of the very
7 same matters that they were litigating before the Brenner
8 Board, which ultimately came out, of course, in the partial
9 initial decision.

10 A classic example would be trying to present the
11 same case essentially on quality assurance, quality assurance
12 allegations at the plant, to try to have another arena hear
13 the same thing.

14 The problem for the Company was that we had to
15 take the same resources, key managers, Director of Office
16 of Nuclear, for instance, Managers of Quality Assurance,
17 senior plant management personnel, and devote those people
18 to defending the Company's position in yet another arena.
19 So, it was a continuing and additional drain upon the
20 Company's resources on many of the same subjects that we
21 saw in the ASLB proceedings.

22 Q Now, Mr. McCaffrey, did the Marburger Commission
23 hearings have anything to do with onsite or offsite power
24 at the Shoreham Nuclear Power Plant?

25 A No.

Q And they didn't have anything to do, did they.

#19-6-SueT 1

2 with the exigent circumstances that may or may not justify
3 an exemption from regulatory requirements by LILCO?

4 MR. EARLEY: Objection. She is asking the
5 witness to give a legal conclusion that I'm sure we will
6 argue when she renews her motion.

7 JUDGE MILLER: Well, I'm sure it will be the
8 subject of argument. I don't know whether it's within
9 the witness' competency or not. He will have to tell me
10 that.

11 WITNESS MC CAFFREY: I believe it is. I think
12 it is another demonstration of those circumstances, and
13 Footnote 3 to the Commission's Order of May 16th defines
14 what they mean by the exigent circumstances.

15 And that is hardships, good faith efforts,
16 public interest, et cetera. In support of my testimony
17 on the effect of intervention, what I'm saying here is
18 here is the same intervenors working the same issues in
19 another related proceeding that drains the Company's re-
20 sources.

21 And I think that is a contributory factor to
22 the good faith efforts that LILCO has made over the years
23 to continue to demonstrate and defend the safety of this
24 plant before whatever arena we are called to defend it.

25 BY MS. LETSCHE: (Continuing)

Q Mr. McCaffrey, it's true, is it not, that those

#19-7-SueT

2 Marburger Commission hearings all took place back in
3 1983?

4 Isn't that correct?

5 A That's correct.

6 Q And whatever went on during that time period --
7 strike that.

8 In 1983, there was no suggestion by LILCO that
9 it had need of an exemption from Commission regulations
10 in order to operate the plant, was there?

11 A No.

12 Q And the fact that LILCO now seeks such an
13 exemption does not change anything that happened during
14 those Marburger Commission hearings, does it?

15 A The exemption request doesn't change what
16 happened. What happened does bear upon the exemption.

17 Q And I take it from your testimony that the
18 mere occurrence of those Marburger Commission hearings is
19 one reason that, in your opinion, LILCO should be granted
20 an exemption from the requirement of CDC-17; is that
21 right?

22 A It's one contributing factor to our position.

23 Q Now, you attended many of those hearings, did
24 you not?

25 A Almost all.

Q And I take it that you are familiar with the

#19-8-SueT

1 reason that that Commission was created by Governor
2 Cuomo?

3 A I'm not sure I recall his exact reason.

4 Q Have you reviewed the report of that panel
5 which it issued at the conclusion of its hearing?

6 A Yes.

7 Q And did you -- strike that.

8 I take it that your testimony in this portion
9 of the page, Page 26, is based upon your understanding and
10 personal involvement in those Marburger Commission hearings;
11 is that right?

12 A I had the corporate responsibility to provide
13 the technical aspects of the Company's position before
14 the Marburger Commission and, therefore, any documents,
15 any testimony, any presentations made before the Commission
16 on matters of health and safety were coordinated and managed
17 and prepared under my supervision and direction.

18 MS. LETSCHE: I would like to have marked as
19 Suffolk County Exhibit LP-20 a document which is being passed
20 out, which consists of four portions of a document entitled,
21 "Report of the New York State Fact Finding Panel on the
22 Shoreham Nuclear Power Facility," December 1983.

23 And I will describe for the record what the
24 portions are that have been included in this exhibit. First
25 is the cover page from that report. Second is the covering

#19-9-Sue¹T

1 letter by John H. Marburger, the Chairman of the Shoreham
 2 Commission to Governor Mario M. Cuomo, which is the first
 3 document appearing in the final report.

4 The second section is the introduction to that
 5 report which begins on Page 1 and runs through Page 4 in
 6 the exhibit.

7 The third is the section entitled "General
 8 Conclusions" which is headed Roman Numeral IV, begins
 9 on Page 35 and runs to Page 37 of the report.

10 And finally -- no, not finally. Then, Appendix
 11 7, Part A, which runs from Pages 7-1 through 7-3, which
 12 is entitled "Appearance List" and identified on the cover
 13 page for Appendix 7 as appearances before the panel.

14 Finally is Appendix 8, headed "Catalog of
 15 Official Documents, Shoreham Commission" which runs from
 16 Pages 8-1 through Page 8-19.

17 JUDGE MILLER: It may be so marked.

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18 (The document referred to is
 19 marked Suffolk County LP
 20 Exhibit 20 for identification.)

21 BY MS. LETSCHE: (Continuing)

22 Q Now, Mr. McCaffrey, do you recognize the
 23 portions of the report of the New York State Fact Finding
 24 Panel on the Shoreham Nuclear Power Facility that are
 25 included in what has been marked as Suffolk County Exhibit 20?

end #19
 Joe flws

1 A I recognize them as exactly that. Portions
2 -- selected portions of the report. I note that many other
3 pertinent sections are missing.

4 Q Now, I take it in your review of the report,
5 that you reviewed the sections that are included in this
6 exhibit, is that right?

7 A I haven't paged through this document in detail
8 that you have just given me. When the report came out, I
9 read the entire report.

10 Q I would like you to turn to the fourth page of
11 the exhibit, which is the introduction section, and the page
12 number on the bottom is 1.

13 A Page 1, introduction?

14 Q Yes. Okay? Now, do you see the discussion, or
15 the statement in the first paragraph of the introduction
16 section which states: The Panel was formed in May, and
17 met for the first time on June 2nd, when the Governor charged
18 it to examine -- and then lists five items underneath that
19 statement.

20 Do you see that statement there?

21 A I see the statement. I further comment that
22 the --

23 Q Excuse me, just --

24 A -- the role of the Commission was significantly
25 expanded beyond that at the request of Interveners, and they

1 got far afield in many issues not provided for in that
2 charter.

3 MS. LETSCHE: Judge Miller, I move to strike
4 the witness' answer, and would request that the Board instruct
5 the witness to await a question from the examiner before
6 commenting.

7 JUDGE MILLER: What was the question?

8 MS. LETSCHE : There was no question.

9 JUDGE MILLER: I thought you asked a question.

10 MS. LETSCHE: I asked him if he had the line
11 I was directing his attention to. And I move to strike
12 his statement that followed that request.

13 JUDGE MILLER: I want to get the record
14 straight. What was the question that you asked?

15 MS. LETSCHE: The question was, do you have
16 that sentence in that portion of the introduction.

17 JUDGE MILLER: And the answer was, yes. The
18 balance will be stricken.

19 BY MS. LETSCHE: (Continuing)

20 Q Mr. McCaffrey, isn't it true that in the intro-
21 duction to this report it states that the Governor charged
22 the panel to examine five particularized subjects?

23 JUDGE MILLER: Now, this document speaks for
24 itself, counsel. We have it before us. We can read. It
25 isn't necessary to ask the witness repetitiously does it

1 say a, does it say b, does it say c.

2 So, we direct you now to proceed and not to
3 rehash what the document says, and you can ask whatever
4 questions you deem appropriate in cross examination.

5 BY MS. LETSCHE: (Continuing)

6 Q Isn't it true, Mr. McCaffrey, that among the
7 subjects that the Governor charged the panel to examine
8 was the nature and manner of assessment of risks associated
9 with the operation of a nuclear power plant, and especially
10 Shoreham?

11 A Yes.

12 Q So, therefore, the discussion during the hearings
13 before the Marburger Panel of matters concerning the risks
14 associated with the operation of Shoreham was one of the
15 precise purposes for the creation of that Commission, wasn't
16 it?

17 A That was one of the purposes.

18 Q Now, isn't it true that in the course of the
19 hearings conducted before the Marburger Panel, LILCO presented
20 testimony and information to the Commission concerning all
21 of the items set forth on this page 1? Numbers 1 through 5?

22 A I would have to review the five items.

23 (Witness peruses document)

24 These are among the issues the panel engaged.

25 Q My question was: Didn't LILCO submit testimony

1 and information to the Commission on those five items?

2 A Yes.

3 Q And that was because that was what the Commission
4 wanted information on, wasn't it?

5 A They requested information from LILCO on these
6 and additional matters.

7 Q I would like you to turn to the section of this
8 exhibit which is headed: IV - General Conclusions.

9 And the page number is 35. Do you have that
10 page before you?

11 A Yes, I do.

12 MR. EARLEY: Excuse me. What page was that?

13 MS. LETSCHE: Page 35. It is headed General
14 Conclusions.

15 BY MS. LETSCHE: (Continuing)

16 Q You are familiar with this section of this
17 report aren't you, Mr. McCaffrey?

18 A As I said, I have read it before. I am not
19 currently familiar with it until I read it.

20 Q Well, take as long as you need to review it.
21 I am going to have a couple of questions about it.

22 A Just page 35 that you are going to be speaking
23 about?

24 Q No. I am talking about this section on
25 General Conclusions.

1 A Pages 35 through 37?

2 Q That is right.

3 (Witness reads document)

4 MR. EARLEY: Judge Miller, I realize there
5 is not a question pending. I have a question about the
6 relevance of this particular line, and why we are inquiring
7 into the detail of the Marburger Commission. I realize
8 the Marburger Commission was referenced in Mr. McCaffrey's
9 testimony, and he explained why he included that in his
10 testimony.

11 I just don't see the relevance of going into
12 the detail.

13 JUDGE MILLER: Well, we don't know until the
14 questions are posed. We assume there is not going to be
15 a great deal of rehashing of the Commission. That was
16 mentioned in page 26 of the testimony. Therefore, counsel
17 is entitled to reasonably cross examine.

18 BY MS. LETSCHE: (Continuing)

19 Q Mr. McCaffrey, if you have read the point one,
20 maybe I can ask my questions on that, and then we can go
21 on , how would that be?

22 A I would prefer to read the whole three pages.

23 Q All right.

24 A All right.

25 Q You state in your testimony on page 26 that

1 LILCO had to devote significant resources to answering the
2 County's baseless claims. And I assume the claims that
3 you are referring to there are those that were raised in
4 the Marburger hearings, is that correct?

5 A Yes. An example is the rehashing of the entire
6 quality assurance record, which the partial , initial
7 decision bore out was that there was no problem with
8 LILCO's quality assurance program, or the quality of
9 construction of the plant.

10 That was an example of the type of issue that
11 we engaged before the Panel.

12 Q Mr. McCaffrey, we really could go a lot faster
13 if you would try to answer my questions. I think they can
14 be answered fairly easily and shortly. My next question
15 is: Isn't it true that in the general conclusions reached
16 by the Marburger Commission was included the finding that
17 Suffolk County adopted its position with respect to the
18 Shoreham plant after commissioning studies of reasonable
19 quality and that the reports of the County's consultants
20 were not irresponsible, or grossly misleading?

21 Mr. McCaffrey?

22 A I am not sure I understand the question.

23 Q Isn't it true that the Marburger Commission
24 concluded that Suffolk County adopted its position after
25 commissioning studies of reasonable quality? Stop it there

1 for a minute.

2 A What is not --

3 Q Could you answer my question, please, Mr.
4 McCaffrey?

5 A No, I cannot.

6 JUDGE MILLER: Just a moment, now.

7 BY MS. LETSCHE: (Continuing)

8 Q You can't answer that question.

9 A The reason is --

10 JUDGE MILLER: I am not asking you to volunteer
11 and I am not asking you to comment, counsel. Now, let's
12 ask another question and get on with it.

13 BY MS. LETSCHE: (Continuing)

14 Q Isn't it true, Mr. McCaffrey, that the general
15 conclusions of the Marburger Commission included the finding
16 that the Suffolk County consultants are reputable in their
17 fields, and their reports indicate deep and relevant technical
18 knowledge of the issues with which they dealt?

19 A That is what it says, and what one has to
20 understand is that Item No. 1 refers to the issue of
21 Emergency Planning, and not to safety issues.

22 And I would further note --

23 Q Mr. McCaffrey, could you wait until I ask a
24 question, please?

25 JUDGE MILLER: He is adding to his answer.

1 Be sure, however, the answer is responsive to the question,
2 and not something volunteered.

3 WITNESS McCAFFREY: Yes, sir.

4 JUDGE MILLER: All right.

5 WITNESS McCAFFREY: The answer is that this
6 applies to emergency planning. I was asked the question
7 is this what the report states. If one would look a
8 couple of lines earlier, it says not every member agrees
9 with each point.

10 As I further stated before, there are elements
11 of this report that are missing. Those elements are the
12 dissenting views, and different views of the various members
13 of the panel. So for a complete record, one has to review
14 all those dissenting appendices to this report. That
15 is what is missing here.

16 What we have here is a --

17 JUDGE MILLER: Wait a minute. I think you
18 have indicated sufficiently now. Your answer to be
19 complete points out as you have partially before that there
20 are missing portions, and they are portions of the report
21 which might bear upon the portions quoted to you by counsel.

22 BY MS. LETSCHE: (Continuing)

23 Q Now, you discuss emergency planning in your
24 testimony that has been prefiled in this proceeding, don't
25 you, Mr. McCaffrey?

1 A Yes, I do.

2 Q And in fact, you have several pages on emergency
3 planning, don't you, where you talk about how there has
4 been discovery in that proceeding, and there are lots of
5 contentions in that proceeding, and lots of depositions,
6 and lots of rulings of licensing boards.

7 You have all that in your prefiled testimony,
8 don't you?

9 A Yes, I do.

10 Q And it is true, is it not, that in the general
11 conclusions reached by the Marburger Commission, they
12 concluded that the position adopted by Suffolk County was
13 based upon studies performed by reputable consultants with
14 deep and relevant technical knowledge of the issues with
15 which they dealt?

16 JUDGE MILLER: Now, hasn't that been asked
17 and answered? I think the answer is in the record. That
18 is what it states, and the witness acknowledged it as such.

19 BY MS. LETSCHE: (Continuing)

20 Q Can you answer my question, Mr. McCaffrey?

21 JUDGE MILLER: No. I direct him not to.

22 We don't want repetitious reading of something in a document
23 before us. We can all read. Just refer to it, and you will
24 be given full opportunity to question, but not repetitiously.

25 BY MS. LETSCHE : (Continuing)

1 Q Are you familiar with the contentions in the
2 emergency planning proceeding, Mr. McCaffrey?

3 A You are speaking to the contentions that
4 are currently the subject of the Laurenson Board?

5 Q That is correct.

6 A The answer is, yes.

7 Q That is a Phase 2 Emergency Planning proceeding,
8 correct?

9 A That is correct.

10 Q And that is one of the proceedings that you
11 discuss at some length in your prefiled testimony, isn't
12 that right?

13 A That is correct.

14 Q And you are familiar with those contentions?

15 A Yes, I am.

16 Q Are you aware of the fact that one of those
17 contentions discusses the credibility of LILCO in
18 implementing an emergency plan?

19 A Yes.

20 Q Would you turn to page 36, please, of the
21 document that has been marked as Suffolk County Exhibit
22 LP-20 for identification?

23 A This is part of Section 4, General Conclusions?

24 Q That is correct. Paragraph 4 in particular.

25 A On page 36 there.

Q Yes. Would you read paragraph 4, please?

1 A You would like me to read the whole paragraph?

2 Q Yes.

3 JUDGE MILLER: I don't think he has to read
4 the whole paragraph into the record. It is there, and
5 it is marked as an exhibit.

6 MS. LETSCHE: Well, Judge Laurenson, if you
7 are willing to just admit this document into the record,
8 then I don't need to have Mr. McCaffrey read it?

9 JUDGE MILLER: I am not going to pre-judge,
10 but I will let Judge Laurenson answer that question,
11 since you addressed it to him.

12 BY MS. LETSCHE: (Continuing)

13 Q My question, Mr. McCaffrey, is: Since you
14 have reviewed this document, including paragraph 4, isn't
15 it true that the general conclusions of the Marburger
16 Commission included a finding that LILCO still lacks
17 credibility as an operator of a nuclear power plant.

18 A That is what Item 4 says, but what you don't
19 have is the benefit of the other views of the panel
20 members.

21 Q Mr. McCaffrey, let me direct you back to the
22 very first page of the general conclusion section, page 35.
23 In the introductory paragraph there, doesn't it state that
24 the paragraphs which follow are carefully worded to reflect
25 that agreement which presumably refers to the agreement of

1 the panel members?

2 JUDGE MILLER: Where are you referring to,
3 counsel?

4 MS. LETSCHE: The first sentence on page 35.

5 JUDGE MILLER: Where the panel worked hard,
6 and so forth.

7 MS. LETSCHE: Yes.

8 End 20.
9 Mary fols.

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Sim 21-1 1

JUDGE MILLER: Where it says "The panel worked hard" and so forth?

2

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MS. LETSCHE: Yes.

4

THE WITNESS: I disagree.

5

BY MS. LETSCHE:

6

Q You disagree with the fact that this introductory statement says "Panel worked hard to discovery points of agreement and that the following paragraphs are carefully worded to reflect that agreement"?

7

8

9

10

Doesn't the document say that?

11

A It says those words.

12

Q And paragraph 4 is one of the paragraphs that follows that statement; isn't it?

13

14

Can you answer that yes or no?

15

JUDGE MILLER: Now just a moment. In framing your questions you have to take the record as you find it. The witness has already told you that in responding any further to your questions on this particular exhibit that there are missing portions and that there are indications that there are other and conflicting views.

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So you can't arbitrarily confine him to a yes or no on something without those qualifications. If you want to build them in, fine, or if you don't want to build them in, then you can't require a yes or no.

22

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The objection is sustained.

Sim 21-2

1 MS. LETSCHE: There wasn't any objection.

2 JUDGE MILLER: You just didn't hear it.

3 MS. LETSCHE: That is true. There wasn't one.

4 BY MS. LETSCHE:

5 Q Mr. McCaffrey, is there anything missing between
6 pages 35 and 36 of this document?

7 MR. EARLEY: Judge Miller, now I will object.
8 I don't see the relevance of this point. He has made
9 clear several times that there are other opinions elsewhere
10 in the document. Whether they appear between pages 35 and
11 36 is irrelevant.

12 JUDGE MILLER: That is true.

13 The objection is sustained.

14 BY MS. LETSCHE:

15 Q Mr. McCaffrey, would you turn to page 37, please,
16 and I would like to direct your attention to paragraph 8
17 on that page. It is the page after the one we are on.

18 Now this paragraph 8 also appears in the general
19 conclusions section of this report; isn't that right?

20 A Yes.

21 Q Would you agree with me that paragraph 8 pertains
22 to offsite emergency preparedness?

23 A Yes.

24 Q And isn't it true that in this paragraph in
25 the general conclusions section it is stated that "The

Sim 21-3

1 panel does wish to express reservations about LILCO's
2 ability to implement a plan that achieves an adequate
3 state of preparedness without the assistance of County
4 Government"?

5 A That is what it speaks to, but it doesn't speak
6 to whether that was a consensus agreement by the panel
7 members.

8 Q It is contained in the general conclusions section,
9 is it not?

10 A Page 35 of the preamble to this section states
11 "Not every member agrees with each point and the reader
12 must consult Section 5."

13 I would further point out that the letter, which
14 we have not discussed, to Governor Cuomo speaks to this.
15 We have arrived at a number of conclusions which most panel
16 members support, not everyone. Individual members have
17 also submitted additional views. That captures the point of
18 this report that there may be items here where a number
19 of people may have agreed, but nobody agrees to everything.

20 Q Is it your opinion, Mr. McCaffrey, that the
21 consensus opinion of the Marburger Commission Panel was
22 that the positions taken by Suffolk County in those hearings
23 were baseless?

24 A No, I don't believe that was the consensus. The
25 record also ---

Sim 21-4

1 MS. LETSCHE: Excuse me. Can you wait until
2 I ask a question.

3 JUDGE MILLER: You have completed your answer.

4 BY MS. LETSCHE:

5 Q I would like to direct your attention to page
6 25 of your testimony, please.

7 Now you reference in the answer to Question 28
8 "challenges to construction permit extension requests." Can
9 you be a little bit more specific for me. What challenge
10 or challenges are you referring to there with respect to
11 construction permit extension requests? Who filed such
12 a challenge? Do you know?

13 A Suffolk County, among others, probably. I am
14 not sure whether all the parties filed for the construction
15 permit.

16 Q When was this that this challenge that you are
17 referring to in your testimony was filed?

18 A The two I recall most vividly would be the
19 current construction permit and going back to when that
20 extension was granted, and then the extension request to
21 the current permit which we have filed for last year sometime.

22 Q My question, Mr. McCaffrey, is with respect to
23 the challenge that you are discussing in this portion
24 of your testimony. What challenge is it that you are
25 referring to here? Did you have anything particular in mind?

Sim 21-5

1 JUDGE MILLER: One question at a time, please.

2 THE WITNESS: I am talking the challenges the
3 County made in opposition to the granting of construction
4 permit extensions, shipments of fuel, et cetera.

5 BY MS. LETSCHE:

6 Q Okay. Now you said challenges that the county
7 made. When were these challenges made?

8 A The challenges were made at the time that LILCO
9 sought to bring its new fuel on site.

10 Q My question is about a construction permit.

11 A Strictly on the construction permits?

12 Q Yes.

13 A They would have been made at the time LILCO filed
14 its application with the NRC for an extension of the current
15 construction permits.

16 Q Mr. McCaffrey, your answer is that they would have
17 been filed. Do you know if in fact Suffolk County ever
18 filed a challenge to a construction permit extension request
19 by LILCO?

20 A That is my recollection.

21 Q But you don't know when?

22 A Not for sure.

23 Q Do you know the basis for this challenge that
24 you recall?

25 A I don't recall.

Sim 21-6

1 Q Well, what did you look at in preparing this
2 testimony to lead you to discuss in it a challenge to
3 a construction permit extension request by the county and
4 conclude that it was frivolous? You do conclude that,
5 don't you?

6 JUDGE MILLER: Now again we are having duplicitious
7 questions. Now which one do you want?

8 BY MS. LETSCHE:

9 Q You conclude that some challenge to the
10 construction permit extension request by Suffolk County
11 was frivolous, don't you?

12 A That is correct.

13 Q Now what did you review in preparing this
14 testimony to determine that a challenge to a construction
15 permit extension request filed by Suffolk County was
16 frivolous?

17 A I didn't look at any particular documents when
18 I wrote this. What I was drawing upon was my knowledge
19 and background in proceedings and my recollection that
20 there was such a challenge.

21 Q But you sitting here today can't tell me when
22 it was filed or the basis for it?

23 A No.

24 Q Were there any hearings held on that?

25 A I don't recall. Again, we are speaking to the

Sim 21-7

1 construction permit now only?

2 Q That is correct. Do you know what form this
3 challenge took that you are addressing here in your
4 testimony?

5 A As I recall, the format would have been a letter
6 from Suffolk County to the NRC opposing such a permit
7 extension and providing the basis for it.

8 Q Is it your testimony that this challenge that
9 you are referring to here delayed the licensing of the
10 Shoreham plant?

11 A No.

12 Q You also reference challenges to shipment of
13 new fuel to the site. Is that also something that you
14 believe was filed by Suffolk County?

15 A Yes.

16 Q And when was this challenge filed?

17 A Oh, that would have been the summer of 1983. It
18 was the subject of various motions before the Brenner Board
19 and it was the subject of at least one conference before
20 the Judge and all the parties who are here at this point
21 today.

22 Q Now I take it that it is your belief or your
23 testimony here that that challenge also was frivolous?

24 A That is correct.

25 Q And what was the basis of that challenge to the

Sim 21-8

1 shipment of new fuel to the site by Suffolk County that
2 you reference here? Do you know?

3 A I don't recall the specifics.

4 Q So you don't know whether or not that challenge
5 was based upon any safety impact of the shipment of new
6 fuel to the site, do you?

7 A No, I don't, but I am not sure what safety has
8 to do with new fuel. New fuel doesn't generally have
9 much of a safety issue associated with it.

10 Q Mr. McCaffrey, what did you review in preparing
11 this portion of your testimony concerning challenges to
12 the shipment of new fuel to the site by Suffolk County?

13 A I reviewed no documents in preparing the testimony.
14 I am drawing upon my own personal recollection and involve-
15 ment in that process. Bear in mind, I am responsible
16 for ASLB proceedings and therefore those arguments before
17 the Brenner Board came under my overall purview.

18 Q What is your basis for saying that these
19 challenges were frivolous?

20 A Because my recollection going back to that time
21 frame was there was no good basis for opposing it and
22 it was simply another delaying tactic.

23 Q But you don't know what the basis was, do you?

24 A I don't recall.

25 MS. LETSCHE: Judge Miller, I move to strike

Sim 21-9

1 Answer 28 to Mr. McCaffrey's testimony, in particular
2 the paragraph on the bottom of page 25, on the basis that
3 he has no basis for the conclusory statements in here
4 that certain challenges which he is unable to identify were
5 frivolous and his conclusion that any knowledgeable person
6 recognizes construction permit extensions and receipt of
7 new fuel on site have no safety impacts on the public.

8 Since he does not even know the basis for any
9 such challenges, if in fact they were made, he has not
10 basis for concluding either that those challenges were
11 frivolous or that they had no safety impacts on the public.

12 I move to strike it as not probative or relevant.

13 JUDGE MILLER: Motion denied.

14 MS LETSCHE: I would like to have marked as
15 Suffolk County Exhibit LP-21 a letter dated March 15, 1983
16 to Mr. Harold R. Denton which is a three-page letter
17 submitted by the Suffolk County Department of Law and the
18 law firm of Kirkpatrick, Lockhart, Hill, Christopher and
19 Phillips with a five-page attachment.

20 JUDGE MILLER: It may be so marked.

21 (The document referred to
22 was marked Suffolk County
23 Exhibit LP-21 for identification.)

24 BY MS. LETSCHE:

25 Q Mr. McCaffrey, have you ever seen this document

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Sim 21-10 1

before?

2

A Yes.

3

Q In fact, this was filed in the proceeding that we are in right now, wasn't it, this licensing proceeding?

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A That is correct.

6

Q If you need to review this document to answer the question, you may certainly do so.

7

8

A Since it is only two pages, I would like to read it.

9

10

MS. LETSCHE: Okay.

11

(Pause while the witness reviews the document.)

12

THE WITNESS: All right.

13

BY MS. LETSCHE:

14

Q Now, it is true, is it not, Mr. McCaffrey, that this letter states a basis for the Suffolk County opposition to extension of LILCO's construction permit?

15

16

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MR. EARLEY: Judge, I object to questions on this particular document first on the grounds of relevance. I don't see what relevance it has to Mr. McCaffrey's opinion, which he has already expressed. Second, this is a document written by Suffolk County's lawyers and it is being proffered here for a reason that is not yet clear, and we certainly can't cross-examine on this. It is hearsay evidence.

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Moreover, it would be improper for the author

Sim 21-11

1 who was counsel for Suffolk County to testify in a proceeding
2 in which he is also counsel for the parties. I don't
3 see where we are going on this and object to questioning
4 on this particular document.

5 JUDGE MILLER: That objection will be sustained
6 for the reasons set forth in the objection.

7 BY MS. LETSCHE:

8 Q Mr. McCaffrey, is the letter that has been marked
9 as Suffolk County Exhibit LP-21 the challenge to a construc-
10 tion permit extension request that you had in mind in
11 preparing the paragraph of your testimony on page 25 that
12 we have been discussing?

13 A Which document have you numbered?

14 Q LP-21, the letter dated March 15, 1983.

15 A Yes. This is an indication of what I mean by
16 the County's frivolous opposition to a construction permit
17 extension.

18 Q That was not my question. Is this letter the
19 document that you were referring to as a challenge to
20 a construction permit extension request when you prepared
21 this portion of your testimony?

22 A When I prepared the testimony, I was referring
23 to my recollection of the emergence of this document in
24 the time frame it emerged.

25 (Pause while counsel confer.)

Sim 21-12 1

BY MS. LETSCHE:

2 Q Now, it is true, is it not, that this document
3 that you were recalling when you prepared your testimony
4 sets forth a basis for the challenge to the constuction
5 permit extension ---

6 MR. EARLEY: I object. Excuse me. I did not
7 know you were not finished.

8 JUDGE MILLER: Well, I was telling the witness
9 not to answer until I heard your objection.

10 I am sorry. Wasn't counsel through framing the
11 question?

12 MS. LETSCHE: I think I was through.

13 JUDGE MILLER: I thought so.

14 MR. EARLEY: I object to that question in that
15 the witness is being asked whether this document provides
16 certain bases which require going into the substance of
17 the document, and I renew the same objection that I had
18 before that relevance ---

19 JUDGE MILLER: I think that is correct. I think
20 that the document is a letter by a lawyer ---

21 MS. LETSCHE: Judge Miller, could I respond,
22 please?

23 JUDGE MILLER: The letter is by a lawyer, or one
24 of counsel in this proceeding. We sustain any interrogation
25 of the witness concernig it. He has testified that in

Sim 21-13 1

2 preparing the testimony that counsel has alluded to in
3 direct that it was not based on any documents, but rather
4 upon his knowledge and recollection of the events with
5 he was acquainted as they occurred.

6 Now this is an effort to bringing in other
7 documents somehow through the back door, but it is not
8 proper and we will have to sustain the objection to it.

9 MS. LETSCHE: Judge Miller, I am merely trying
10 to understand or obtain on this record the basis for
11 Mr. McCaffrey's conclusion concerning what he just stated
12 was "this document" that he concludes in his testimony was
13 frivolous, and I think I am entitled to inquire ---

14 JUDGE MILLER: Wait a minute. Let's find out
15 where it is in his testimony that he refers to this document.

16 MS. LETSCHE: I just asked him that and he
17 answered that the document he was recalling when he wrote
18 this testimony was this document.

19 JUDGE MILLER: So that doesn't render it
20 admissible and it doesn't render it ---

21 MS. LETSCHE: I haven't moved it into evidence,
22 Judge Miller. I am merely attempting to use it to inquire
23 into the basis for Mr. McCaffrey's conclusion that this
24 challenge was frivolous.

25 end Sim
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2 And, in fact, I intend to use it through Mr.
3 McCaffrey to rebut and to impeach his statement that this
4 challenge was frivolous, because in fact Mr. McCaffrey will
5 have to admit, if he reads this document, that it does
6 contain a basis for the challenge.

7 He has testified that without this document, he
8 doesn't recall what the basis for the challenge was.

9 JUDGE MILLER: He said there is no basis and
10 hence it was frivolous. That's what his testimony --

11 MS. LETSCHE: Judge Miller, he did not say
12 that. He said he did not recall what the basis was.

13 JUDGE MILLER: He also said he thought it was
14 frivolous, that the bases of these various things were
15 frivolous.

16 Now, there is no sense in you trying to produce
17 a self-serving document, written by a member of your law
18 firm, and then trying to use it to get in to back door
19 evidence. Now, it's not proper, it's not admissible, and
20 it's self-serving. And it is not relevant to this particular
21 line of inquiry.

22 MS. LETSCHE: Judge Miller, Mr. McCaffrey's
23 testimony is self-serving and not relevant and is conclusory,
24 and he has himself stated he doesn't know the basis for it.

25 I moved to strike it, and you denied that motion.
In light of that, I'm entitled to get into the record the

#22-2-SueT 1

2 opposite side of the story. He can't even tell us the
3 basis for his side. I have the document here which he
4 stated he was referring to in his testimony. If that
5 refreshes his recollection, that's fine. If not, I am
6 entitled to get into the record the facts that contradict
7 and impeach this witness' testimony.

8 JUDGE MILLER: You are not entitled to get into
9 the record self-serving statements by lawyers, including
10 yourself and members of your law firm.

11 MS. LETSCHE: This is the document the witness
12 was referring to in writing his testimony.

13 JUDGE MILLER: I don't care what it was. It's
14 a self-serving letter written by a member of your law
15 firm. It isn't going to be admitted to prove the facts or
16 anything else.

17 In fact, the question has been raised by counsel
18 that where lawyers attempt to testify, directly or indirectly,
19 it raises questions. I don't want to get into those ques-
20 tions. But I'm certainly not going to allow a self-serving
21 letter by a lawyer to be used as a basis of inquiry of a lay
22 witness.

23 The objection was sustained. You have had it
24 marked. You have got your record. Now, go ahead and ask
25 something else.

MS. LETSCHE: I would like to renew my motion to

#22-3-SueT 1

2 strike this testimony on the basis that it contains a legal
3 conclusion by a non-lawyer witness as to the nature of the
4 challenge, whether or not the challenge had any basis,
5 in that he asserts that it was frivolous.

6 I move to strike it. He is not qualified to make
7 that judgment. And the Board has prohibited me from put-
8 ting in any evidence to try to impeach that statement by
9 this witness.

10 JUDGE MILLER: The motion is overruled.

11 BY MS. LETSCHE: (Continuing)

12 Q Isn't it true, Mr. McCaffrey, that LILCO's
13 request to ship new fuel to the Shoreham site was initially
14 denied by the Atomic Safety and Licensing Board?

15 (Pause.)

16 A That's not quite the way it developed. The
17 licensing board didn't deny our request because our request
18 was not processed through the licensing board. They
19 received new fuel under Part 70. It was processed through
20 the Nuclear Regulatory Commission.

21 It was by virtue, as I recall, of the County
22 going before the licensing board and requesting a halting
23 of that shipment. And indeed the shipment was halted until
24 other factors developed after that.

25 Q That's right. And the shipment, in fact, was not
permitted, was it, until security concerns that had been

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1 identified for the licensing board had been resolved and
2 approved by the NRC Staff?

3 Isn't that right?

4 A As I recall, there was a, I will call it,
5 settlement between LILCO and Suffolk County with regard to
6 that shipment. To characterize the Staff as approval is a
7 bit misleading. The Staff didn't require any of those
8 additional security measures. The Company met the security
9 requirements.

10 The Staff, of course, is always party to all
11 these agreements between the parties, and they concurred
12 with it. More protection is just fine.

13 Q Now, in your position with the Company at the
14 time that this new fuel shipment issue was raised, you
15 were involved in the licensing proceedings; isn't that
16 right?

17 A That's correct.

18 Q And you reviewed the pleadings and other docu-
19 ments that were filed in the licensing proceeding; isn't
20 that right?

21 A Correct.

22 MS. LETSCHE: I would like to have marked as
23 Suffolk County Exhibit LP-22 a document entitled "Confirmatory
24 Order Lifting Interim Order Staying Shipment of Fuel,"
25 dated June 14, 1982. It's a two-page Order. It's followed

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2 by five pages of transcript, which is an attachment to the
3 Order itself.

4 (The document referred to is
5 marked Suffolk County LP
6 Exhibit 22 for identification.)

7 BY MS. LETSCHE: (Continuing)

8 Q You are familiar with this document, aren't you,
9 Mr. McCaffrey?

10 A Yes.

11 Q And this is the Order that resulted in LILCO's
12 being able to ship new fuel to the site; isn't that
13 right?

14 A That's correct.

15 Q And isn't it true that in this Order the
16 licensing board stated, and I will direct your attention
17 to the last sentence on the first page, that the Board
18 stated on the record at the time: We approved the resolu-
19 tion arrived at by the parties and stated that we would lift
20 the stay if the Staff's review concluded that a lifting of
21 the stay on these terms would be acceptable.

22 Isn't that what the Brenner licensing board
23 stated?

24 A That's what it says.

25 Q And isn't it true that it was a result of the
Staff's agreement that a lifting of the stay of the

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2 shipment would be acceptable following the resolution of
3 the security concerns, as a result of those two factors
4 that, in fact, the shipment was permitted by the Board?

5 A The point here of --

6 Q Could you answer my question please, Mr.
7 McCaffrey?

8 Isn't it true that those two conditions is what
9 resulted in the permission to ship the fuel according to
10 the Board?

11 JUDGE MILLER: Now, you are asking this witness
12 to express a view as to what caused the entry of an Order
13 from the Atomic Safety and Licensing Board.

14 MS. LETSCHE: Excuse me. The last part of
15 my question, Mr. Miller, was according to the Board's Order.

16 JUDGE MILLER: Yes, I understand. But I can
17 read the Order and so can you.

18 MS. LETSCHE: I want the witness to read it.

19 JUDGE MILLER: The witness is not the lawyer.
20 The witness is not privy to what was in the licensing
21 board's mind.

22 The document speaks for itself. And you've got
23 it marked. You have got your identification number on it.
24 That's sufficient. You can't get any more out of the
25 witness. He can't second-guess the Board or is not
qualified, as a matter of fact, to interpret it. And we

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don't want him to speculate.

2 So you should not properly ask any more questions
3 based upon that Order of this witness.

4 BY MS. LETSCHE: (Continuing)

5 Q You state on Page 28 of your testimony, Mr.
6 McCaffrey, at the bottom of -- the last sentence in the
7 answer to Question 31, that at a time when LILCO was
8 attempting to finish the plant critical personnel were
9 being diverted to the litigation arenas.

10 Do you see that statement?

11 A Yes.

12 Q At any time during the licensing proceedings,
13 did LILCO ever request a stay of those proceedings so that
14 it could finish the plant?

15 (Pause.)

16 A No.

17 Q I would direct your attention to Page 32 of your
18 testimony. Prior to LILCO's -- strike that.

19 Mr. McCaffrey, LILCO -- excuse me. Would you
20 give me a moment?

21 (Pause.)

22 Mr. McCaffrey, you state in this answer, the next
23 to the last sentence, that the extended hearings have and
24 will continue to delay the plant's fuel load date. Do you
25 see that statement?

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A Yes.

2 Q When, in your opinion, was the LILCO plant
3 capable of loading fuel?

4 A In the April, early May, 1984 time frame.

5 Q Now, assuming the plant was capable of loading
6 fuel in April or May 1984, in fact, that fuel load is
7 dependent upon the issuance of a license by the NRC to do
8 so; isn't that right?

9 A That's correct.

10 Q And based upon the Commission's Order, because
11 of the failure of the TDI diesels and the non-availability
12 of onsite AC power source that complies with GDC-17, the
13 issuance of such a license must await the issuance of an
14 exemption from compliance with GDC-17; isn't that right?

15 A That's correct.

16 Q So, in fact, the reason that fuel load did not
17 occur in April or May of 1984 and, in fact, has still not
18 occurred to date is because the Commission has not issued
19 to LILCO a license to do that?

20 Can you answer that yes or no?

21 A Yes. Yes.

22 Q Mr. McCaffrey, on Page 31 of your testimony,
23 in the answer to Question 34, you state, and I'm quoting,
24 "The protracted licensing process has created the perception
25 that the Shoreham licensing proceeding may never end."

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Whose perception are you referring to there?

2 A The perception of people within the Company,
3 the perception of the nuclear industry, the perception of
4 the general public.

5 Q I think I know your basis for knowing LILCO's
6 perception. I take it your basis for knowing the nuclear
7 industry's perception is your dealings with other utilities
8 on generic licensing issues; is that right?

9 A Any regulatory issue, including generic issues.

10 Q I was just referring to the statement in your
11 testimony here.

12 A Through my dealings with the people in the
13 industry, in the regulatory industry.

14 Q Right. Now, what is your basis for asserting
15 that it is the general public's perception that the
16 Shoreham licensing proceeding may never end?

17 A Two examples specifically. One is the amount
18 of press that has generated over the years as a result of
19 these proceedings, and Shoreham in general. One has only
20 to pick up a daily newspaper, any old newspaper on Long
21 Island, you can read about Shoreham almost any day.

22 I think that has created and contributed to a
23 perception. In addition, over the years I have participated
24 on the Company's Nuclear Speaker's Bureau. This is a group
25 of some thirty-five or forty nuclear engineers who voluntarily

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2 go out, as requested by the Company, when organizations
3 request presentations on Shoreham-specific, their nuclear
4 power in general, and we go out to public forums, Rotary
5 groups, whatever, any group that will ask for a presentation.

6 And out of my presentations before those groups,
7 I certainly pick up a flavor of that type of a perception.

8 Q Now, this, I gather from your answer then, is
9 your perception of the general public perception; is that
10 right?

11 A Not strictly. The other members of the Speaker's
12 Bureau that we talk with routinely bring back some feedback.

13 Q You haven't performed any studies or surveys
14 or polls of the general public's perception on when the
15 Shoreham licensing proceeding may end, have you?

16 A No.

17 Q And you aren't a social scientist or a statistical
18 analyst who is in the business of analyzing public percep-
19 tions, are you?

20 A No.

21 Q Now, can you tell me what the fact that the
22 industry or LILCO may perceive that the Shoreham licensing
23 proceeding may never end has to do with LILCO's noncompliance
24 with GDC-17?

(Pause.)

end #22 24

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1 A I think this comes under the exigent circumstances
2 section, where a public perception that the plant may never
3 operate can contribute to that potentially happening, and
4 therefore it is a factor that is relevant to the exemption
5 for GDC-17.

6 Q Mr. McCaffrey, on page 32 of your testimony
7 you answer the question: Why are the costs of the Shoreham
8 litigation pertinent to LILCO's application for an exemption?

9 And in that answer, you say that the length
10 and the cost of hearings are pertinent because they
11 demonstrate the unusual burdens placed upon LILCO over the
12 years by interveners use of the NRC licensing process,
13 isn't that right? That is what you say there?

14 A That is correct.

15 Q Now, your testimony does not address the
16 costs or burdens on any other party that have resulted from
17 the LILCO licensing process, does it?

18 A Other than LILCO and its consultant personnel,
19 that is correct.

20 Q In fact, you don't have any way of knowing,
21 do you, what the cost or other burdens that have been
22 placed upon the public or others as a result of the Shoreham
23 licensing process are, or how they compare to those faced
24 by LILCO?

25 JUDGE MILLER: That is double-barreled. Which
do you want?

1 MS. LETSCHF: The first one.

2 MR. EARLEY: I object to the relevance of the
3 question.

4 JUDGE MILLER: Overruled.

5 WITNESS McCAFFREY: There is a burden beyond
6 LILCO's financial and manpower burden, and that has to do
7 with the burden to the taxpayers in Suffolk County, because
8 ultimately the cost of litigation, whether it be expended
9 by LILCO, its consultants, or Suffolk County, ultimately
10 is going to be borne by the ratepayers as it affects the
11 final cost of the plant.

12 I have routinely attended Suffolk County
13 legislative meetings over the years on the funding of
14 intervention for this plant. I have read resolutions coming
15 out of that, attesting to fairly large sums of money for the
16 County to develop its case.

17 So, I think one has to look at the total financial
18 burden to Long Island at large, when one talks about costs.
19 And certainly there is a large cost associated with Nuclear
20 Regulatory Commission, which has to, of course, come in as
21 any other party and present its case, and that is an
22 additional cost that is borne by the public.

23 BY MS. LETSCHE: (Continuing)

24 Q Your testimony, Mr. McCaffrey, does not compare,
25 does it, any burdens placed on anyone other than LILCO to the

1 burdens placed upon LILCO resulting from the NRC licensing
2 process?

3 A That is correct.

4 Q Now, Mr. McCaffrey, throughout your testimony --
5 and I am not going to list all the pages -- but you discuss
6 the discovery that is taking place in the diesel litigation
7 and the low power litigation, and the emergency planning
8 litigation, isn't that true?

9 A That is correct.

10 Q Now, you are not suggesting, are you, that
11 any of that discovery was not conducted in compliance with
12 the NRC's regulations?

13 A I think we talked about this before, but the
14 answer is, no.

15 Q Well, I am trying to shorten this, because
16 what we talked about before was just during the time period,
17 I believe, of up to 1982, and only deal with the health
18 and safety issues. I am trying to summarize here with
19 respect to all the other discovery you talk about.

20 And I take it you also are not suggesting that
21 any of the licensing board rulings on discovery matters
22 taking place in those proceedings; emergency planning,
23 diesel litigation, or low power litigation, were in violation
24 of the Commission's regulations?

25 A That is correct.

1 Q I take it you are also not suggesting that
2 the decisions to admit contentions for litigation in any
3 of those proceedings were in violation of the Commission's
4 regulations?

5 A Correct.

6 Q Or that the conduct of any evidentiary hearings
7 during any of those proceedings was in violation of the
8 NRC's regulations?

9 A That is correct.

10 Q Basically, you just don't like how long it all
11 took, is that right?

12 A I feel the process has been overly burdensome
13 over the years. I think the company has had to deal with
14 massive discovery, which we have been responsive to. I
15 think the Boards have gone over backwards to accommodate
16 the concerns of the Interveners, and I think all of that
17 has contributed to a very length, protracted process, which
18 if it doesn't hold the record already for the lengthiest
19 ASLB OL proceedings, we will soon have that record.

20 MS. LETSCHE: If I could have just a minute,
21 please.

22 JUDGE MILLER: Yes. Mr. Palomino, will you be
23 ready to proceed upon conclusion of counsel's cross? I
24 would like to finish this witness tonight.

25 MR. PALOMINO: Judge, I would prefer not to.

1 JUDGE MILLER: I understand, but still we have
2 covered a lot, and we would appreciate -- without prejudice
3 to your client -- if you could cooperate, and all counsel,
4 to finish the examination of the witness tonight. We are will-
5 ing to set over until tomorrow morning such motions as you
6 might have if you want to. We will give you the choice
7 on that.

8 MR. PALOMINO: May I ask this? Could we get
9 an estimate of how much time everybody is going to take,
10 so we might make a decision as to whether to proceed or not?

11 JUDGE MILLER: How much time does Staff have?

12 MR. PERLIS: I have no cross examination
13 of this witness.

14 JUDGE MILLER: How much in redirect, if there
15 be redirect?

16 MR. EARLEY: I can finish my redirect in ten
17 minutes.

18 JUDGE MILLER: Ten minutes.

19 MR. PALOMINO: I will be ready to proceed.

20 JUDGE MILLER: Okay. Mr. Palomino, will you
21 bail us out if we get empounded on our car because it is
22 after sunset.

23 MR. PALOMINO: I don't know if I can. I will
24 do what I can.

25 JUDGE MILLER: Okay.

1 MS. LETSCHE: I don't have any more questions.
2 But I do want to renew my Motion to Strike.

3 JUDGE MILLER: Yes, and we will give you an
4 opportunity, as I promised you, -- we would prefer to do
5 it when all cross has been concluded. You may either do it
6 tonight or you may do it in the morning. You can think it
7 over and you make your choice on that. But you will be
8 given the chance.

9 Mr. Palomino, please?

10 CROSS EXAMINATION

11 BY MR. PALOMINO:

12 Q Mr. McCaffrey, you said that you believe that
13 the -- it was your estimate that the plant was capable of
14 loading fuel at the end of April or early May this year,
15 is that correct?

16 A That is correct.

17 Q Isn't it a fact that you were in a pre-operational
18 testing in the second week of May this year, and the discovered
19 a leak in a pipe that dumped seventy-five gallons of water
20 from the holding tank onto the floor of the -- which building
21 was it -- the waste building?

22 There was joint in a regenerative evaporator
23 system?

24 A No.

25 Q That is not accurate that didn't occur in the

23--7-Wal

1 second week of May?

2 A The event is accurate, but what is not accurate
3 is that it was part of the pre-operational test program.
4 My understanding is it was not associated with any
5 particular completion of a pre-operational test.

6 Q Wasn't Mr. Patrone there as part of an inspection
7 on a pre-operational test?

8 A No. Mr. Patrone is there all the time. He
9 lives on site. He is the resident inspector.

10 Q He is a resident, but -- let's see. The date
11 was correct though, wasn't it?

12 A Sounds about right.

13 Q That is right. And -- where is it. And a week
14 before that you had a power outage for twenty minutes?

15 MR. EARLEY: Objection.

16 JUDGE MILLER: Overruled. Give us your best
17 memory on it.

18 WITNESS McCAFFREY: Yes.

19 BY MR. PALOMINO: (Continuing)

20 Q If you will bear with me just a minute. And
21 didn't that leak require them -- the NRC to make a determination
22 whether the regenerative evaporator system was designed
23 correctly, and if the plans were correctly adhered to during
24 construction?

25 A I don't recall. That sounds reasonable upon

1 any occurrence at the plant. Such a determination sounds
2 reasonable.

3 Q All right. So, under those circumstances, it
4 wasn't likely that you were going to be capable of loading
5 fuel, was it?

6 A There is no relationship between that event
7 and our ability to load fuel.

8 Q The fact that you have power outages wasn't
9 relevant?

10 A That is correct.

11 Q All right.

12 A Because of the circumstances on that particular
13 outage.

14 JUDGE MILLER: I couldn't hear you.

15 WITNESS McCAFFREY: Because of the circumstances
16 on that particular outage.

17 BY MR. PALOMINO: (Continuing)

18 Q What were the circumstances?

19 A The circumstances were that the plant was in
20 an abnormal configuration for the purposes of testing the
21 TDI diesels. Various breakers were lined in a position
22 they would not have been in in normal plant operation.

23 As I recall, one of the two main station
24 transformers was tagged out for purposes of that testing,
25 and therefore the plant was on only one transformer, and

1 when the power was lost to the site under those circumstances,
2 the plant was not configured to provide the ability to provide
3 AC power immediately, as it would have been in normal
4 operations.

5 So, the plant was not in a configuration that
6 the plant would be in operation. Therefore, what happened
7 is not pertinent to operation.

8 What happend was on one of the substentions
9 that fed the site there was a problem that tripped the
10 feeder to the one remaining circuit to the site, again
11 one circuit was already tagged out and, therefore, both
12 circuits were out. The backup TDI diesels were not aligned
13 in the normal configuration, and those were the circumstances.

14 Q It also burned out a connector, right?

15 A What did?

16 Q The excess current, I assume.

17 A No.

18 Q No? Let me ask you this. You are familiar
19 with the contentions raised in the proceedings, aren't you?
20 That is your function, according to page 2 of your testimony,
21 isn't it?

22 A That is correct.

23 Q And, there are some contentions that could
24 be dispositive of this proceeding, aren't there?

25 A I am not sure what you mean by that.

1 Q Well, Contentions 1 to 10 in the Offsite
2 Emergency Planning.

3 Let me lay a foundation. The Plan you have
4 submitted for offsite emergency planning provides for
5 evacuation solely by LILCO employees, and supervised by
6 them and their contractors, without any assistance from
7 the County or State, isn't that correct? Without any
8 participation by the County or State?

9 A That is correct because of the failure of
10 Suffolk County to provide a Plan, LILCO has been forced
11 to provide its own Plan, utilizing its own workers.

12 Q And you submitted such a Plan, is that correct,
13 for approval?

14 A Correct.

15 Q One of the requirements, according to NUREG --
16 you have to show the legal ability to implement the Plan.

17 MR. EARLEY: Objection, Judge.

18 JUDGE MILLER: Overruled. Let him answer.
19 Let's find out what the witness says. Do you have any
20 knowledge on that subject?

21 BY MR. PALOMINO: (Continuing)

22 Q NUREG 0654.

23 A I am not personally knowledgeable about our
24 legal rights to implement such a plan. Those rights are
25 currently the subject of --

1 Q No, no, I am not asking about the rights.

2 JUDGE MILLER: That is not what he is asking.

3 BY MR. PALOMINO: (Continuing)

4 Q I didn't ask you that. I said as the person
5 submitting the plan, and the proponent of the plan, and the
6 group who is going to implement it, you have to show the
7 legal authority to implement it, isn't that correct?

8 A Yes, and that is the subject of litigation.

9 Q All right. Now, -- and that was raised in the
10 contentions when they were first filed, wasn't it?

11 A Yes, they were.

12 Q And FEMA questioned your authority also, right,
13 to implement the plan at the time the contentions were
14 filed when they reviewed them?

15 A They had questions concerning LILCO's legal
16 authority, correct.

17 Q And that went back to last year, didn't it?
18 Last June, with FEMA?

19 A That is a reasonable time frame, yes.

20 Q And during all that time -- that is an issue
21 that couldn't be decided in the proceeding, isn't it?

22 JUDGE MILLER: Now you may be getting him
23 into legal questions.

24 MR. PALOMINO: Well, I mean Judge Laurenson
25 ruled that it was one they could not decide the question

1 of the authority of New York law, isn't that --

2 MR. EARLEY: The record in the proceeding will
3 reflect whatever Judge Laurenson happened to say.

4 MR. PALOMINO: Well, if you want to wait until
5 I get the record, we can suspend it until tomorrow.

6 JUDGE MILLER: Do you have any familiarity
7 with such a ruling, which counsel has represented was made
8 in Judge Laurenson's court, without going into any details.
9 I am not asking you to give an opinion as a lawyer. Do you
10 have any familiarity with it or not?

11 WITNESS McCAFFREY: Yes.

12 JUDGE MILLER: What is your recollection.

13 WITNESS McCAFFREY: I was there during one
14 session before Judge Laurenson, where in the course of
15 trying to deal with these first ten contentions which deal
16 with legal authority, as I recall, he suggested it may be
17 appropriate for the Interveners to take their case to a
18 State level, and that is my recollection of how those
19 were moved to a different arena.

20 JUDGE MILLER : Were those the questions
21 you were inquiring about?

22 MR. PALOMINO: Just a moment. Did he suggest
23 it was the Interveners who should take it?

24 WITNESS McCAFFREY: Yes.

25 BY MR. PALOMINO: (Continuing)

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1 Q Did the Interveners have the burden of proving
2 legal authority?

3 MR. EARLEY: Objection.

4 JUDGE MILLER: Let's find out -- if the witness
5 doesn't know or remember, he may tell us. We are just trying
6 to find out what he recalls, and we are not making any
7 long or complicated inquiry.

8 WITNESS McCaffrey: My recollection is that
9 Judge Laurensen though there may be a question of
10 States Rights here, and perhaps getting the view of the
11 state level would be appropriate to the interpretation
12 of the legal authority for LILCO to implement its LERO
13 Plan.

End 23.
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Sim-24-1

1 And following that, the parties took him up on
2 that suggestion and I understand that we are in State Court
3 now dealing with LILCO's legal authority which is the
4 subject of the first ten contentions in the offsite emergency
5 planning proceedings.

6 JUDGE MILLER: They are now pending in State
7 Court in some kind of litigation; is that right?

8 MR. PALOMINO: May I pursue this in an orderly
9 fashion?

10 BY MR. PALOMINO:

11 Q The fact is didn't New York State move to dismiss
12 the proceeding on the ground that it couldn't proceed because
13 there was no evidence of legal authority to implement the
14 plan and they pointed out that the burden was on LILCO to
15 establish it in State Court proceedings?

16 A I don't recall.

17 Q Did LILCO ever commence a suit in State Court
18 on that issue?

19 MR. EARLEY: Objection, Judge. I don't see
20 the relevance of this line of questioning.

21 MR. PALOMINO: Your Honor, may I point out the
22 relevance of it?

23 JUDGE MILLER: Go ahead. I am letting you ask
24 it. Go ahead and tell us what you recall.

25 THE WITNESS: Well, I have a question I would

Sim 24-2

1 like to ask there.

2 JUDGE MILLER: Just answer the question. If
3 you can't answer it, just say so.

4 THE WITNESS: I can't answer the question.

5 MR. PALOMINO: Let me proceed and we will finish
6 in a hurry.

7 BY MR. PALOMINO:

8 Q Mr. McCaffrey, New York State and Suffolk County
9 started a suit to determine this issue in State Court, didn't
10 they?

11 A It sounds right.

12 Q And the immediate response of LILCO was to seek
13 an extension of time to answer, which was one and a half
14 times in addition to the legal time they had to answer,
15 wasn't it? They moved for an order ---

16 A I don't know.

17 Q --- which delayed the determination of that
18 issue.

19 MR. EARLEY: The witness just answered he didn't
20 know.

21 MR. PALOMINO: I didn't realize.

22 JUDGE MILLER: What did he answer? I didn't
23 get it.

24 What was your answer?

25 THE WITNESS: The answer was I don't know.

Sim 24-3 1

BY MR. PALOMINO:

2 Q Would you say I was incorrect if I said that?

3 MR. EARLEY: Objection. He said he didn't know.

4 MR. PALOMINO: Well, he might not disagree with
5 my correct question?

6 JUDGE MILLER: Yes, that is a possibility.

7 THE WITNESS: I don't know.

8 MR. PALOMINO: All right. You can't say whether
9 I am correct or not.

10 BY MR. PALOMINO:

11 Q Did LILCO thereafter seek to remove it to
12 Federal Court?

13 A Yes.

14 Q And the Federal Court found that there was no
15 basis for removing it and they remanded it to the State
16 Court, didn't they?17 A I don't know for sure. It perhaps has been
18 moved back to State Court.19 Q And LILCO still hasn't submitted an answer in
20 that proceeding?

21 A I don't know.

22 Q And the fact is that if are that anxious to get
23 a determination, you could have brought this suit last
24 year when this question was first raised.

25 A I think the company was prepared to litigate it

24-4

1 before the Laurenson Board, and it was the parties that
2 took it out of that Board.

3 MR. PALOMINO: Oh, no. Judge Laurenson recognized
4 that he didn't have the authority to, isn't it a fact, and
5 that he urged the parties at all times to have it determined
6 by a State Court?

7 MR. EARLEY: Judge, I object to that. Counsel
8 is testifying. He asked the witness a question and the
9 witness didn't know the answer. He didn't like the answer
10 and now counsel is trying to testify.

11 MR. PALOMINO: I said isn't that a fact.

12 JUDGE MILLER: Well, just so he testifies correctly
13 on this issue which is largely legal. I would like to
14 get it over with for the record.

15 MR. EARLEY: Judge, I believe there is an order
16 in the case. If he has the order, can we produce the order
17 so the witness can take a look at it?

18 JUDGE MILLER: You can find it if he is misquoting
19 it. We expect lawyers to quote accurately ---

20 MR. PALOMINO: Well, then, I will have to reserve
21 on this and bring in a record tomorrow, Your Honor.

22 JUDGE MILLER: All right. Well, you don't need
23 the witness tomorrow, do you?

24 MR. PALOMINO: No, I don't need the witness,
25 Your Honor.

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1 JUDGE MILLER: Because whatever you want, you
2 will be given an opportunity.

3 MR. PALOMINO: I have no further questions.

4 JUDGE MILLER: The staff?

5 MR. PERLIS: The staff has no questions.

6 JUDGE MILLER: LILCO?

7 MR. EARLEY: Judge, I just have a few questions on
8 redirect.

9 REDIRECT EXAMINATION

10 BY MR. EARLEY:

11 Q Mr. McCaffrey, counsel for the county asked you
12 some questions concerning the steam bypass issue, and I
13 believe at one point you were asked whether anyone on the
14 staff told you they were holding LILCO to a different
15 standard. And I believe you testified on that issue that
16 you didn't know.

17 At any other time has the staff told you that
18 LILCO was being held to a different standard?

19 A Yes.

20 Q Can you explain the circumstances or describe
21 that, please?

22 A Over the course of the years in licensing with
23 the NRC I have had occasion to have discussions with the
24 project management as well as staff personnel who have
25 conveyed to me their recognition that LILCO is indeed held

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Sim 24-6

1 to a higher standard and that is attributed to the litigation.

2 Q Ms. Letsche also asked you some questions con-
3 cerning examples of being held to a higher or a different
4 standard. The questions, as I recall, were limited to a
5 particular time frame. Can you think of any other examples
6 not limited to, and I believe it was the '77 to '79 time
7 frame. Can you think of other examples regardless of the
8 time frame?

9 MS. LETSCHE: I object. That is beyond the scope
10 of cross-examination.

11 JUDGE MILLER: I think probably it is. The
12 objection is sustained.

13 BY MR. EARLEY:

14 Q There was a discussion in the cross-examination
15 concerning your opinion that the Safety Evaluation Report
16 for Shoreham could have been issued in the 1978-'79 time
17 frame, and I believe you gave some of your bases. Were
18 there any other bases that you did not give during that
19 cross-examination?

20 A Yes, there is. I have had occasion to read in
21 some part a draft Safety Evaluation Report dated February
22 1979, which was apparently available to the staff and was
23 on the verge of being released.

24 Q Mr. McCaffrey, you were asked some questions
25 concerning I believe it was the 1980-'81 SALP report marked

Sim 24-7

1 as LILCO Exhibit LP-19. Do you have that exhibit in front
2 of you?

3 A Just give me a moment.

4 (Pause.)

5 Yes, I have it.

6 Q Now I believe you were questioned about the
7 statement that appears in that report about the applicant
8 being recalcitrant. Could you give your understanding of
9 what was meant there?

10 A Yes. I think recalcitrant ---

11 MS. LETSCHE: Excuse me. Let me note my objection.
12 This witness is not competent to testify as to what the
13 Project Manager of the NRC staff meant by the word
14 "recalcitrant" in the report that that gentleman wrote.

15 JUDGE MILLER: I think that is correct unless
16 the witness has other information.

17 THE WITNESS: I do.

18 JUDGE MILLER: Well, you may lay a foundation
19 then if he is going to testify. I think it is correct
20 on the basis of the document itself that it does not appear
21 that he knows what was in the writer's mind.

22 Now if you have another source of information,
23 lay your foundation and go ahead.

24 BY MR. EARLEY:

25 Q Mr. McCaffrey, do you know Mr. Wilson whose name

Sim 24-8

1 appears on that particular document?

2 A Yes, I do.

3 Q And did you deal with him in the course of your
4 duties at LILCO?

5 A Yes, I did.

6 Q And did you have discussions with him concerning
7 that particular SALP report?

8 A Yes, I did.

9 Q And did you have meetings with him?

10 A There would have been a SALP meeting held with
11 the staff at LILCO on this particular SALP.

12 Q And did he discuss with you the contents of that
13 SALP report?

14 A Yes.

15 Q And did he elaborate on the meaning of the
16 issues in that SALP report in those discussions?

17 JUDGE MILLER: Let me ask the witness. Is this
18 one particular conversation or several that you are about
19 to relate?

20 THE WITNESS: This would have been one particular
21 conversation.

22 JUDGE MILLER: When did that take place approxi-
23 mately in your best memory?

24 THE WITNESS: About the time frame that the SALP
25 report was issued.

Sim 24-9

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JUDGE MILLER: What date is that?

THE WITNESS: This is June of 1981

JUDGE MILLER: Where did that conversation take place?

THE WITNESS: I personally talked to Mr. Wilson who was ---

JUDGE MILLER: I said where.

THE WITNESS: I don't recall, Your Honor. It could have been on the phone or it could have been in person. I don't recall.

JUDGE MILLER: Who was present?

THE WITNESS: Myself and Mr. Wilson.

JUDGE MILLER: Besides yourself and Mr. Wilson, anyone else?

THE WITNESS: No, sir.

JUDGE MILLER: Give us your best recollection of what each of you said as best you recall.

THE WITNESS: What I am trying to put ---

JUDGE MILLER: No ---

MS. LETSCHE: Excuse me. Just let me note my objection.

THE WITNESS: Based upon those discussions ---

JUDGE MILLER: No. What was said as best you recall it? He said and I said. I am trying to get the conversation.

Sim 24-10

1
2 THE WITNESS: My questions in that time frame
3 were aimed at trying to understand what the staff meant
4 by recalcitrant.

5 JUDGE MILLER: Mr. Witness, listen to me. I am
6 asking you in the traditional style of getting a conversation
7 as best you can recall into the record. I want you to comply
8 with my questions if you will, please. I am asking you
9 after laying the foundation about who, what, where and
10 when it took place, your best memory, and I know you don't
11 remember verbatim, but I want your best memory of what
12 each of you said, and you can start out by saying I said
13 and he said. That is your best way to approach it.

14 Now do it in that framework, please.

15 MS. LETSCHE: I just want to make sure my
16 objection is noted to the hearsay nature of this testimony.

17 JUDGE MILLER: Go ahead.

18 THE WITNESS: I believe it was on a phone call.
19 I was questioning the meaning.

20 JUDGE MILLER: What did you say?

21 THE WITNESS: I questioned the meaning of the
22 word recalcitrant and ---

23 JUDGE MILLER: What did you say as best you
24 recall it? He is on the phone. As best you call, what
25 did you say now? I don't want conclusions.

THE WITNESS: I said what does the staff mean

Sim24-11 1 by the word "recalcitrant"?

2 JUDGE MILLER: All right, and what did he say?

3 THE WITNESS: What was explained was ---

4 JUDGE MILLER: No, no. Don't use words like
5 explained.

6 THE WITNESS: Well, I don't recall the exact words,
7 Your Honor.

8 JUDGE MILLER: I know that. I am asking your
9 best recollection. Now if you don't remember, you can
10 tell me that.

11 THE WITNESS: The answer was that LILCO in the
12 course of its response to various staff questions and during
13 the course of meetings and in the course of the final stage
14 of the safety evaluation review which was completed in the
15 spring of 1981 was in the mode of not ---

16 JUDGE MILLER: Remember to use his words to the
17 best of your memory.

18 THE WITNESS: --- was not in the mode of agreeing
19 readily with the staff's position on a given issue and
20 that we were consuming more staff resources on the Shoreham
21 docket than they would like to have had devoted to Shoreham
22 to deal with the remaining technical issues at that point
23 in time.

24 JUDGE MILLER: Then what did you say as best
25 you remember it?

Sim 24-12₁

1 THE WITNESS: As best I remember it, therefore
2 I said well, therefore, I understand that we are not rolling
3 over as readily as the staff would like us to do on a given
4 issue. We are maintaining our position and not conceding
5 readily to the staff.

6 JUDGE MILLER: And what did he say as best as
7 you can remember?

8 THE WITNESS: He agreed with that characterization.

9 JUDGE MILLER: No, he didn't agree. He didn't
10 say ---

11 THE WITNESS: I am saying it just kind of ended
12 at that.

13 JUDGE MILLER: That was it?

14 THE WITNESS: That was pretty much it.

15 JUDGE MILLER: As you recall it.

16 THE WITNESS: That is right.

17 JUDGE MILLER: Now that testimony regarding the
18 conversation may stand.

19 Now what was your next question?

20 MS. LETSCHE: Let me just note for the record
21 that I move to strike that testimony on the ground that the
22 witness started out by saying he did not recall any of the
23 words of the conversation and proceeded to characterize it.

24 JUDGE MILLER: Overruled. The witness was asked
25 to give his best recollection.

Sim 24-13

1 Proceed.

2 BY MR. EARLY:

3 Q Mr. McCaffrey, that document also referenced an
4 E&DCR issue. Has the issue of E&DCR been addressed in
5 subsequent SALP reports?

6 A Yes, they have.

7 Q And do you recall what those subsequent reports
8 said about E&DCRs?

9 A Yes. There was a SALP report issued in early
10 1984 which addressed the prior one-year period, and in that
11 SALP report, which was recently issued, the staff acknowledged
12 their belief in the past about the E&DCR process and conceded
13 that the bottom line was it worked and therefore that was an
14 acceptable program.

15 Q Mr. McCaffrey, you were asked a number of
16 questions concerning the issue of bring new fuel on site
17 and security concerns. This may be in the record, but
18 I want to clarify it.

19 Prior to that issue being raised, do you know
20 what the staff's position was on the adequacy of LILCO's
21 security measures for new fuel?

22 MR. PALOMINO: I object. That is not proper
23 redirect, Your Honor.

24 JUDGE MILLER: I think the subject was gone into
25 in extensive cross-examination earlier in the afternoon is

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my best memory. What are you addressing it to that came up in cross-examination?

MR. EARLEY: There were a series of questions concerning the new fuel issue and counsel for the county asked a number of questions about whether the staff had to approve the new fuel security requirements after this issue had been raised in front of the Licensing Board, and I am trying to nail down whether this witness knows what the staff's position had been before the issue had been raised.

JUDGE MILLER: How would he know that?

MR. EARLEY: In his position as ---

JUDGE MILLER: I know his position, but how would he know of his own knowledge?

MR. EARLEY: His discussions with the NRC and what they have told him about the acceptability.

JUDGE MILLER: You are going to have to lay a foundation. The way we do it in court and the way I did it a minute ago, if you are going to rely on a conversation, we want it to be as reliable as possible and you are going to have to find out when it took place, if it did, who was present and what was said to the witness' best recollection. We are not going to take any lower standard of proof now on oral conversations.

Now if you are prepared to do that, that is one

Sim 24-19

1 thing.

2 JUDGE MILLER: What was your objection? I am
3 sorry, I didn't get it.

4 MR. PALOMINO: Your Honor, my objection is
5 that he is asking about the staff's attitude prior to what
6 was inquired into on ---

7 JUDGE MILLER: Well, let me find out.

8 What was the period of time that was involved
9 in the prior cross-examination? Let's find out if it
10 is or is not in the same time frame. That is the basis
11 of Mr. Palomino's objection.

12 MR. EARLEY: Judge, my understanding is that
13 the cross-examination involved essentially the same
14 time period and the issue was resolved over about a three-
15 week or one-month period.

16 JUDGE MILLER: Well, what time period was it?

17 MR. EARLEY: I believe that time period would
18 have been late May and June of 1982.

19 JUDGE MILLER: And is your inquiry based upon
20 the same time frame then?

21 MS. LETSCHE: Excuse me. If I could interject
22 myself since it was my question that everyone is discussing
23 here. My line of questioning went to this witness' testi-
24 mony which talked about the challenge to the approval of
25 the shipment of the new fuel. None of my questions dealt

Sim 24-16 1

2 with anything that went on with respect to the new fuel
3 shipment prior to that request by LILCO for permission to
4 ship it.

5 My questions went to what happened subsequent
6 to that request and therefore I think Mr. Palomino is
7 correct that Mr. Earley's questions are beyond the scope
8 of my cross.

9 JUDGE MILLER: Well, limit your questions to the
10 scope of the interrogation on cross-examination.

11 MR. EARLEY: Judge Miller, the point is that if
12 the county is going to argue that there is some significance
13 to the fact that the staff approved the plans after this
14 issue was raised, it is important for the Board to know
15 whether or not they approved of them before.

end Sim 14

Sue fols 15

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JUDGE MILLER: Who would best know that?

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MR. EARLEY: Mr. McCaffrey knows that --

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JUDGE MILLER: No. He would only know it if

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he has got a good memory and if I can get him to say who

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said what.

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The Staff would know that, wouldn't they? They

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are sitting over there --

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MR. EARLEY: It may be in conversations. It also

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may have been in documents.

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JUDGE MILLER: It may not have been at all

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either. I think the best evidence would be to get the

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responsible Staff personnel or else get a stipulation that

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is acceptable to the parties.

14

Proceed.

15

MR. PERLIS: Excuse me Mr. Chairman.

16

JUDGE MILLER: Who wants to be excused? You?

17

MR. PERLIS: I would love to be --

18

(Laughter.)

19

JUDGE MILLER: Go ahead.

20

MR. PERLIS: Just to make the record clear, I

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would be happy to get this information and provide it to

22

the Board tomorrow.

23

JUDGE MILLER: All right, provide it to your

24

fellow counsel, however.

25

MR. PERLIS: I will do that. If I could just

#25-2-SueT1

state my basic recollection --

2 JUDGE MILLER: No. If you are going to do it,
3 you know, do it that way and then it will be a better
4 record on whatever the answer is.

5 MR. PERLIS: I will do that.

6 JUDGE MILLER: As I say now, provide that in
7 some form to all counsel so they will be prepared either
8 to agree or to disagree.

9 MS. LETSCHE: Let me just again note my objection
10 that that line of questioning is beyond the scope of the
11 cross examination.

12 JUDGE MILLER: I don't --

13 MS. LETSCHE: It's also not relevant.

14 JUDGE MILLER: It might be. I don't know. The
15 transcript will be here at 8:30 or whatever it is in the
16 morning. You will have a chance to check instead of relying
17 on all of our memories.

18 MR. EARLEY: I have no further questions.

19 JUDGE MILLER: No further questions. Is there
20 anything further on the basis of redirect?

21 MS. LETSCHE: Yes.

22 RE-CROSS EXAMINATION

23 BY MS. LETSCHE:

INDEXXXXX 24 Q Mr. McCaffrey, you indicated in response to
25 some questions by Mr. Earley that you had discussions with

#25-3-SueT

2 people affiliated with the NRC Staff other than concerning
3 the steam by-pass issue in which they told you that LILCO
4 was held to different standards.

5 Do you remember that line of questioning?

6 A Yes.

7 Q Now, in your answer to Mr. Earley, who at the
8 NRC Staff was it that you were referring to that you had
9 such conversations with?

10 A An example would be Mr. Caruso who was the
11 project manager.

12 Q Now, Mr. Caruso didn't become the project
13 manager until, I believe, it was 1983; is that right?
14 I'm not sure that's exactly right. Isn't that true, roughly
15 that time?

16 A I'm not sure of the exact time.

17 Q He was not the project manager during the time
18 period, 1976 through 1981 at all, was he?

19 A That's correct.

20 Q Anyone else that you recall having these conversa-
21 tions with that you reference in your answer to Mr. Earley?

22 A Not by specific name. I can't recall the
23 individual Staff people over the years.

24 Q When did you have this conversation with Mr.
25 Caruso?

A As recently as a week ago.

#25-4-SueT

Q Oh, I see. So that certainly wasn't what you were referring to when you wrote this testimony, was it?

A That was merely confirming another example of my perception over the years that we've been held to a different standard.

Q Okay. Now, getting back to what you wrote in your testimony here, I take it that you are unable to identify any NRC Staff members who told you that LILCO was being held to a different standard than other plants; is that right?

A I've had a discussion with Mr. Tomlinson along those lines.

Q When was that discussion?

A That discussion took place at the day of the demonstration, July 2, I believe, during the EMD diesel demonstration at the site.

Q That's --

A When we were --

Q That's July 2nd, 1984; is that right?

A That's correct, when we held a general discussion about the hoop, so to speak, that LILCO has to jump through to license the plant and --

Q Was Mr. Tomlinson discussing what was happening back in 1976 through 1981 or '82?

A No.

#25-5-Sue

2 Q Now, other than that conversation with Mr.
3 Tomlinson, do you recall any other NRC Staff members who
4 told you that LILCO was held to a different standard?

5 A Not by name.

6 Q And I take it that in your conversation with --
7 strike that.

8 You mentioned in response to a question from Mr.
9 Earley that you had seen, I believe you said, a draft
10 SER dated February 1979; is that right?

11 A That's correct.

12 Q Do you know why that was not finalized?

13 A Well, certainly Three Mile Island occurred
14 shortly thereafter, and that put the entire regulatory
15 process into a state of paralysis.

16 Q Now, this document that you saw that you des-
17 cribed as a draft SER, February 1979, how did you come to
18 see that?

19 A I came to see that document in the course of
20 my preparation for the prudency hearings before the New
21 York State Public Service Commission --

22 Q And --

23 A -- in sponsoring Long Island Lighting Company
24 testimony in the area of regulatory prudence over the
25 life of the Shoreham station and in the course of preparation
for that case I have had occasion to put my hands on that

#25-6-SueT

document.

2

Q Now, after having -- let me see, when was it that you put your hands on this document?

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A About two weeks ago.

5

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Q I see. So, I take it that that wasn't something that you had at the time you wrote this testimony, was it?

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A That's correct.

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Q Now, it's true, is it not, Mr. McCaffrey, that in the licensing process, or the Staff review process, let me amend that, that the Staff review goes through a very elaborate review process itself; isn't that right, within the Staff?

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A Yes.

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Q And individual evaluations of particular issues or matters end up going through a number of divisions or individuals in a particular staff branch before the review is finalized or is signed off on and adopted as a Staff position; isn't that right?

20

A That's my understanding.

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Q Now, in response to a question from Mr. Palomino, concerning the emergency planning litigation on the proposed offsite plan submitted by LILCO to the NRC, you stated I believe that LILCO was required to submit such a plan because of -- I think I wrote it down right -- the failure of

#25-7-Sue

Suffolk County to provide a plan; is that right?

2 A That's correct.

3 Q Now it, in fact, is the case, isn't it, Mr.

4 McCaffrey, that Suffolk County did prepare a draft offsite
5 emergency response plan for the Shoreham plant, didn't it?

6 MR. EARLEY: Objection. I think we have gone
7 beyond the scope of redirect, and we are trying to build
8 on Mr. Palomino's questions.

9 JUDGE MILLER: It's in the record. Proceed.

10 BY MS. LETSCHE: (Continuing)

11 Q Let me restate my question so you can answer
12 it for me. And I will ask you to answer it yes or no.

13 Isn't it true, Mr. McCaffrey, that Suffolk
14 County did prepare a draft radiological emergency response
15 plan for the Shoreham plant?

16 A I can't answer yes or no.

17 Q Are you familiar, Mr. McCaffrey, with Resolution
18 Number 111-1983 adopted by the Suffolk County Legislature
19 with respect to emergency preparedness to respond to a
20 radiological accident at the Shoreham plant?

21 A Yes.

22 Q Let me direct your attention to what has been
23 marked as Suffolk County Exhibit LP-21, in particular the
24 attachment to that document.

25 Do you have it up there with you?

#25-8-Sue

1 JUDGE MILLER: Now, I think we are beyond the
2 scope of redirect.

3 MS. LETSCHE: No, Judge Miller. If I may be
4 permitted to continue, I --

5 JUDGE MILLER: I don't think you are on this
6 line, because I believe you are beyond the scope of
7 redirect.

8 MS. LETSCHE: I'm pursuing the statement that
9 Mr. McCaffrey made in response to the other examination --

10 JUDGE MILLER: By whom?

11 MS. LETSCHE: By Mr. McCaffrey that --

12 JUDGE MILLER: Examination by whom?

13 MS. LETSCHE: By Mr. Palomino.

14 JUDGE MILLER: Mr. Palomino of the State of New
15 York and Suffolk County have expressed very close, if not
16 parallel, views. You are not going to cross-examine on
17 the cross-examination of someone who is on your own side
18 of the issue.

19 We didn't open it up on that. We only opened
20 it up on redirect. Now, there is no redirect that I'm
21 familiar with that goes into that. So, you are beyond the
22 scope now.

23 MS. LETSCHE: Well, I'm pursuing Mr. McCaffrey's
24 response.

25 JUDGE MILLER: No, you are not.

#25-9-SueT 1

2 MS. LETSCHE: Well, that's because you are not
3 letting me. If --

4 JUDGE MILLER: That's right.

5 MS. LETSCHE: -- you would permit me --

6 JUDGE MILLER: No, no, we don't. I think it's
7 beyond the scope.

8 MS. LETSCHE: I would just like to make a proffer,
9 then, of the evidence that I would --

10 JUDGE MILLER: Do that in your own case. You
11 don't need a proffer. You can offer it if it's relevant.
12 You can offer it. If it's admissible it will be admitted.
13 If it isn't, it won't be admitted then or now.

14 MS. LETSCHE: I would like to make the proffer
15 of the evidence that if permitted I would establish.

16 JUDGE MILLER: You can't make a proffer in the
17 other person's case. We have already ruled that. We've
18 also said you can make the proffer in your own case.

19 MS. LETSCHE: Well, Judge Miller, Mr. McCaffrey
20 is not part of my case. Part of my --

21 JUDGE MILLER: Not your witness and this isn't
22 your case. You misapprehend the basis of the ruling.

23 We are ruling that no party can offer into
24 evidence and get a ruling upon exhibits except the person whose
25 case is being put on in chief.

Now, you will get your turn. You will be permitted

#25-10-Sue¹

to make your proffer just as everybody else --

2 MS. LETSCHE: Will the Board rule that Mr.
3 McCaffrey will be available for recall?

4 JUDGE MILLER: Well, not necessarily. It
5 depends on the nature of your request and your showing of
6 good cause. No, recall? I would doubt that.

7 MS. LETSCHE: Then, I need to be permitted to
8 pursue this line now.

9 JUDGE MILLER: No, you don't.

10 MS. LETSCHE: Well, then, you are telling me that
11 I can't pursue it.

12 JUDGE MILLER: You can't prove your case by the
13 other person's witness in the other person's case in chief.
14 Now, we've ruled that at the very beginning.

15 MS. LETSCHE: All I'm trying to do, Judge Miller,
16 is cross-examine this witness by following up on an earlier
17 statement that he made.

18 If the Board has ruled that I'm not permitted to
19 do that, so be it. I just want it clear what it is I am
20 attempting to do.

21 JUDGE MILLER: We have ruled that your attempts
22 are beyond the scope of the redirect examination. We are
23 restricting recross to the scope of redirect.

24 It's beyond the scope and, therefore, not proper.
25 Go ahead if you have anything that is within the scope of

#25-11-Sue?

redirect. That's all that is before us now.

2 MS. LETSCHE: In view of the Board's ruling that
3 I can't follow up on the other questioning by other counsel,
4 I have no further questions at this point. But I do wish
5 to indicate that I intend to renew my motion to strike and --

6 JUDGE MILLER: You will be permitted to do that.

7 MS. LETSCHE: -- that --

8 JUDGE MILLER: Any time you want. Very shortly,
9 as a matter of fact. We will hear you any time. If you
10 want to do it tonight, you can be heard tonight. If you
11 want to do it in the morning, you will be heard in the
12 morning. So, you have got the choice, counsel.

13 MS. LETSCHE: I would like to be able to
14 complete what I was saying before I --

15 JUDGE MILLER: I don't want to listen to a
16 lot of statements that are repetitious and getting us no-
17 where. Now, please act like a lawyer, counsel.

18 Do you have any more questions or not?

19 MS. LETSCHE: I said I did not.

20 JUDGE MILLER: Then, that's enough. Mr.
21 Palomino?

22 MR. PALOMINO: I have no further questions.

23 JUDGE MILLER: Staff?

24 MR. PERLIS: The Staff has no questions.

25 MR. EARLEY: No questions.

#25-12-SUB E T

JUDGE MILLER: Then, there is nothing further.
2 Now, if you wish now to go into your motion, you may. If
3 you wish to do it in the morning, you may. That's up
4 to you.

5 MR. PALOMINO: I would prefer to do it in the
6 morning.

7 JUDGE MILLER: I think everybody would be
8 fresher, but since she has been wanting to I want to give
9 her the courtesy. I also want to get out of the parking
10 lot.

11 MR. ROLFE: Judge Miller.

12 JUDGE MILLER: Yes.

13 MR. ROLFE: Before we adjourn, let me clarify
14 one thing. I have been told that the word is out somewhere
15 that the site tour, that some members of the public think
16 it's okay for them to go. I have in effect full
17 security at the site. And --

18 JUDGE MILLER: We know that. We have indicated
19 that it is by the Board --

20 MR. ROLFE: And the parties.

21 JUDGE MILLER: -- and any of the parties or
22 counsel. And that's all. We have also indicated it isn't
23 any hearing; it's no evidence. We don't even want to hear
24 any words.

25 MR. ROLFE: I just wanted to clarify that.

#25-13-Sue¹

MS. LETSCHE: I have -- excuse me. I have something else.

JUDGE MILLER: Can't you bring it up in the morning?

MS. LETSCHE: No, because I assume Mr. McCaffrey isn't going to be here in the morning. If he is going to be here, that's fine.

I want to move into -- or indicate that I intend to move into evidence, assuming if my motion to strike is not granted, the exhibits that I have used during this cross-examination.

JUDGE MILLER: It will be denied at this time. As we have told you about ten times, please don't argue --

MS. LETSCHE: Excuse me, Judge Miller. With respect to every other cross-examination that has taken --

JUDGE MILLER: You are arguing, counsel. The record is closed at this point.

We recess until tomorrow morning at 9 o'clock.

(Whereupon, at 7:15 p.m., the hearing was adjourned, to reconvene at 9:00 a.m., Thursday, August 2, 1984.)

* * * * *

END

CERTIFICATE OF PROCEEDINGS

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

In the matter of: LONG ISLAND LIGHTING COMPANY

Date of Proceeding: Wednesday, August 1, 1984

Place of Proceeding: Hauppauge, New York

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

Garrett J. Walsh, Jr.

Official Reporter - Typed

Garrett J. Walsh, Jr.
Official Reporter - Signature

Myrtle H. Traylor

Official Reporter - Typed

Myrtle H. Traylor
Official Reporter - Signature

Rebecca E. Eyster

Official Reporter - Typed

Rebecca E. Eyster
Official Reporter - Signature