

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

Location: Hauppauge, New York

Pages: 1949 -2196

Date: Friday, August 3, 1984

TR 01

o/i

TAYLOR ASSOCIATES

Court Reporters
1625 I Street, N.W. Suite 1004
Washington, D.C. 20006
(202) 293-3930

8408080150 840803
PDR ADOCK 05000322
T PDR

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

On Behalf of the Applicant:

ROBERT M. ROLFE, ESQ.
ANTHONY F. EARLEY, JR., ESQ.
JESSINE MONAGHAN, ESQ.
Hunton & Williams
707 East Main Street
Richmond, Virginia 23212

On Behalf of the Staff:

EDWIN REIS, ESQ.
ROBERT PERLIS, ESQ.
Office of the Executive Legal Director
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

On Behalf of the Intervenor, Suffolk County:

KARLA J. LETSCHE, ESQ.
CHERIF SEDKY, ESQ.
JOHN BIRKENHEIER, ESQ.
Kirkpatrick, Lockhart, Hill, Christopher
& Phillips
1900 K Street, N. W.
Washington, D. C. 20555

On Behalf of the Intervenor, The State of New York:

RICHARD J. ZAHNLEUTER, ESQ.
Special Counsel to the Governor
Executive Chamber
Room 299
State Capitol
Albany, New York 12224

* * * * *

Sim 1-3

C O N T E N T S

VOIR

WITNESSES

DIRECT CROSS REDIRECT RECROSS BOARD DIPE

JAMSHED K. MADAN)
-- and --)
MICHAEL D. DIRMEIER)

1961 2071 2074 2005

DALE G. BRIDENBAUGH)
-- and --)
RICHARD B. HUBBARD)

2155 2178 2175

LAY-IN DOCUMENTS

(None)

E X H I B I T S

EXHIBIT NO.

IDENTIFIED

ADMITTED

LILCO LP-11
" LP-12
" LP-13

2030
2030
2031

Suffolk County LP-23
" " LP-24
" " LP-25
" " LP-26
" " LP-27
" " LP-28
" " LP-29
" " LP-30
" " LP-31
" " LP-32
" " LP-33
" " LP-34
" " LP-35

2092 *
2106 *
2116 *
2116 *
-- DENIED
-- DENIED
2161
2161
2161
2161
2161
2161
2161

2092
2106
2116
2116

* Suffolk County Exhibits LP-23, LP-24, LP-25 and LP-26 were not officially previously marked for identification.

P-R-O-C-E-E-D-I-N-G-S

(9:00 a.m.)

1
2
3 JUDGE MILLER: Good morning, ladies and
4 gentlemen. I guess we are at the point now of considering
5 the various Motions, and I am happy to say that we
6 recognized a lot of them when we got around to being
7 able to read them quietly, so we have really read and
8 considered much of the matters contained in previous
9 Motions, in illuminae and the like, Motions by LILCO,
10 the Staff's response to a Suffolk County Motion in
11 illuminae, I think, and so forth.

12 Does counsel wish to be heard briefly, or
13 what is your pleasure. We have come to certain
14 provisional judgments or conclusions on the areas we
15 deem admissible, and the areas we deem not admissible.
16 I don't know how you wish to do it, so as to give you
17 all the benefit of being able to focus on the contentions.

18 MR. SEDKY: I guess that really depends on
19 what is being heard. Since they seem to be the ones
20 who are raising the issue of the admissibility, I would
21 think that they ought to proceed with their argument. If
22 the Board prefers us to go forward, we certainly will
23 do that.

24 JUDGE MILLER: Oh, no, you are quite correct
25 on whose Motion it is. LILCO -- it would be the objectors

1 Motion -- or ultimately, if it all -- that is not the
2 problem. There are essentially three areas as the
3 witnesses have delineated, and I think probably
4 everybody, and there are three major areas which are
5 under consideration.

6 I guess the first one would be from the
7 first group of pages, oh, probably through --

8 MR. ROLFE: I think there are 21, Judge
9 Miller.

10 JUDGE MILLER: Yeah. Through 21. That
11 is where we are looking at the economic benefits that
12 LILCO says, and the witnesses testified, results from
13 the grant of the exemption, and the acceleration of
14 approximately ninety days, or three months, of low
15 power testing and operations from the result of granting
16 an exemption. If an exemption were to be granted and
17 not doing so would be -- the assumption I suppose it
18 would be about three months later.

19 Now, as to that, essentially the present
20 financial situation regarding LILCO, so much of the
21 past -- we don't want to get into causes and all that,
22 because we don't consider that the function of this
23 Board, nor do we want to carry that too far in the
24 future, because once again, we are not trying to speculate
25 as to that, and there are certain areas that are pending

1-3-Wal

1 before other Boards and the Commission anyway.

2 And any testimony given by LILCO, or any
3 matters which reasonably flow therefrom, anything
4 reasonably connected with whatever LILCO has presented
5 of course is available for analysis, refutation,
6 rebuttal, or whatever.

7 So, that group of issues and testimony we
8 think is clearly admissible. We might have questions
9 as to minor points of procedure as we go, but we think
10 that area is proffered for the consideration of the
11 exemption requested as to low power licensing in this
12 somewhat circumscribed group of issues before this
13 particular Board.

14 Now, the second group of testimony -- I
15 will refer generally to the pages. From that point
16 on to, oh, about forty or so, is proffered, as we
17 understand it, under the contention or belief by the
18 County that granting the exemption might, or could or
19 would adversely affect the public health and safety
20 because of the financial condition, the strained
21 financial circumstances of the utility.

22 There, we have not seen any showing -- and
23 we will leave it open to counsel to make the attempt --
24 we have seen no showing of any actual connection, nexis,
25 causal connection or relationship between that more or

1-4-Wal

1 less undisputed, let us say, statement of financial
2 condition and the requested low power operations pursuant
3 to exemption, if granted. That we would be inclined not
4 to regard as admissible.

5 Then the third group or category, if we
6 are interpreting it correctly, goes into the effect of
7 exemption on LILCO's customers, and providing service,
8 and matters of that kind. We are very dubious about
9 that relevancy, frankly. We doubt if it is. We doubt
10 if we should take the time and every requisite to go
11 into that, although we would never preclude the County
12 from making its appropriate proffers to protect its
13 record, but we would be inclined to regard that as
14 not material.

15 In other words, much used and so forth.
16 There I think we are looking at materiality, probative
17 value, assistance to triers of fact and the like, rather
18 than try to see if it has some esoteric relevance in
19 a narrow sense.

20 Now, those are the provisional judgments
21 that the Board has come to in regard to this proffered
22 testimony and whatever exhibits are related thereto.
23 We would expect counsel to sort out the exhibits and the
24 scope of the exhibits insofar as they bore on these
25 three areas. But that is our provisional conclusion, and

1 we have considered this in the past so far as we had
2 materials. We realize there is updating, and perhaps
3 as counsel from Suffolk County has indicated, some
4 diminution or shrinking of the volume of the exhibits,
5 which means there will be probably more refined focusing
6 by everybody, which is helpful.

7 Now, a query. Do you want to proceed with
8 the testimony. You have gotten our provisional view.
9 Do you want to have us hear arguments at this time?

10 We leave that to respective counsel.

11 MR. SEDKY: I guess, Your Honor, it depends
12 on what would happen by proceeding with the testimony.
13 If those are the Board's preliminary views, and are
14 prepared to hear the testimony as a whole, subject to
15 Motions to Strike at the end as has been the prior
16 practice, then certainly we are prepared to go along
17 on that basis.

18 JUDGE MILLER: Well, I think we indicated
19 we may differ from prior practice, which was more
20 limited types of testimony. There we could look at the
21 overall twenty or thirty pages and get a view. Issues
22 were fewer and less complex in number.

23 MR. SEDKY: Well --

24 JUDGE MILLER: That was why we suggested
25 here -- for example, on the first 21, 22 pages, whatever,

1 it doesn't matter. We view it as admissible. You can
2 go right ahead with that.

3 MR. SEDKY: I am only trying to get a
4 clarification, Judge Miller, as to what you mean by
5 going forward with the testimony.

6 JUDGE MILLER: The witnesses are here. We
7 can rule at any time, either en mass on these three
8 categories, if you wish. We can let it come up as it
9 comes up. We are trying to get orderly procedure, and
10 we thought it might be helpful, whether you agree with
11 our ruling or not.

12 MR. SEDKY: I understand. I guess we prefer
13 just to go forward and see what happens.

14 MR. ROLFE: Judge Miller, LILCO would
15 prefer to resolve the matter now, because if the Board's
16 provisional rulings are indeed its final rulings, then
17 there are a number of matters that LILCO need not go into
18 on cross examination, and we would save time.

19 I might also point out at this time --

20 JUDGE MILLER: Well, what you could do there,
21 when you come to such a grouping -- I don't know whether
22 they are neatly divided on pages 21 or 22. When you come
23 beyond that point, or the issues subsumed therein, you
24 could certainly make a motion as to the next group or
25 category of issues, testimony, and related exhibits, if you

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

felt that that would be the best way to handle it with the least expenditure of time and energy.

We are trying now to be expeditious, and yet give a reasoned approach, and to give opportunity to all counsel to make the record.

End 1.
Mary fols.

2-1

1 MR. ROLFE: Judge Miller, I can proceed that
2 way. I can tell the Board that as to the first 21 pages,
3 which the Board has ruled admissible, LILCO did not contest
4 the relevance of those pages in any event.

5 We did contest one portion of them, and I will
6 deal with that when we get to it. If the Board wishes
7 LILCO to wait until it gets to the remainder of the testimony
8 to formally move to strike, I can do it that way, too.

9 I just thought it might be easier since the
10 Board has ---

11 JUDGE MILLER: Well, we are inclined in this
12 instance, and contrary to the practice we have been following
13 with testimony of less scope and complexity, we are
14 inclined to have the rulings come up as to admissibility
15 of groups of issues, because if you wait until it is all
16 in and then go back, in the first place, there is a lot of
17 lost motion in bringing us all back to where we are. In
18 other words, I guess we are in between.

19 We are saying you don't have to wait until
20 the conclusion of all of the testimony in order to make
21 motions, because then we have got a huge record anyway.

22 MR. ROLFE: I understand.

23 JUDGE MILLER: However, we are saying also that
24 we don't want to handle it piecemeal in the sense of every
25 other page. So we have given you the three areas as we

Sim 2-2

1 see it.

2 We would believe that counsel could go forward
3 with his case until you reach a point where we are going
4 to have to have a ruling on the next grouping and then
5 approach that any way you wish.

6 MR. ROLFE: I will do it that way, Judge
7 Miller, and I will delineate when I get to a new group.

8 I might add in LILCO's view there is a fourth
9 category of evidence in there, but I will address that
10 when I get to it, if Your Honor would prefer.

11 JUDGE MILLER: Well, if it is something that we
12 haven't considered and it should be looked at now, briefly
13 while we are looking at what we have seen as three, you
14 can indicate it if that would be efficient. I don't know
15 what it is.

16 MR. ROLFE: Well, I will do that. There is
17 around pages 43 through 47 some testimony concerning the
18 effects of having to decommission the plant in the event
19 that a full-power license is not ultimately awarded for
20 Shoreham, and it is LILCO's position ---

21 JUDGE MILLER: All right. When we get to
22 decommissioning, we would certainly like to hear from all
23 parties, counsel for the county, you and the staff.

24 MR. SEDKY: I have asked Messrs. Dirmeier and
25 Madan to resume the stand, Your Honor.

Sim 2-3

1 JUDGE MILLER: Thank you.

2 You may resume the stand, gentlemen.

3 Whereupon,

4 MICHAEL D. DIRMEIER

5 -- and --

6 JAMSHED K. MADAN

7 resumed the witness stand and, having been previously duly
8 sworn by Judge Miller, were further examined and testified
9 as follows:10 MR. SEDKY: I believe where we left off was
11 that they had been tendered for cross-examination.12 JUDGE MILLER: Yes, that is correct. You had
13 identified I think the first group of exhibits of Suffolk
14 County for identification, 23 through 27?

15 MR. SEDKY: 27 or 28 I believe.

16 JUDGE MILLER: All right, whatever. Yes, 28,
17 you are right.

18 Cross-examination.

19 CROSS-EXAMINATION

20 BY MR. ROLFE:

21 Q Mr. Madan, in your many years of consulting,
22 you have never consulted or testified on behalf of a utility,
23 have you, sir?

24 A (Witness Madan) No.

25 Q And you have no previous participation in NRC

INDEXXXXXX

INDEX

Sim 2-4

1 licensing proceedings; is that correct, sir?

2 A (Witness Madan) That is correct.

3 Q Now it is true, is it not, gentlemen, that
4 Georgetown Consulting has been involved with the Shoreham
5 plant for a number of years?

6 A Involved in the sense of participation in LILCO
7 rate cases, yes. We have been, I think, from the '75 time
8 frame onwards.

9 Q And I believe that Georgetown Consulting Group
10 has testified since that 1974/75 rate case in a majority
11 of the rate cases concerning the Shoreham plant; is that true?

12 A Well, the rate case was the rate case, and
13 Shoreham was an issue in those rate cases.

14 Q And Georgetown Consulting Group's participation
15 in that rate case or series of rate cases, however you want
16 to characterize it, has always been on behalf of a coalition
17 consisting of Suffolk County and others; is that right?

18 A Yes, I believe that is true. The only point
19 of clarification is that I think the original case was
20 done under Touche Ross. The '74-'75 case was members of
21 Touche Ross.

22 Q And throughout that proceeding it has been your
23 position generally that the rates allowed ought to be lower
24 than the rates which LILCO sought; is that correct, sir?

25 A Generally that has been the end result; that is

Sim 2-5

1 correct.

2 JUDGE MILLER: I am sorry that I did not ask
3 counsel for the State to identify himself for the record.
4 My apologies. You may do so.

5 MR. ZAHNLEUTER: Thank you, Judge Miller. My name
6 is Richard Zahnleuter, and I have filed a notice of
7 appearance dated April 18th, 1984, and I represent the
8 Governor of the State of New York.

9 JUDGE MILLER: You may proceed.

10 WITNESS MADAN: I had not finished my last
11 answer.

12 JUDGE MILLER: I am sorry. I didn't mean to
13 cut you off.

14 WITNESS MADAN: I would point as well that the
15 actual awards of many of those cases have been substantially
16 less than sought by LILCO, and perhaps in some of them
17 much closer to our position than in LILCO's.

18 MR. ROLFE: Your Honor, I move to strike the
19 last portion of the witness' answer as non-responsive to
20 the question.

21 JUDGE MILLER: You may consider that as being
22 restricted so that he can keep track of his own box scores
23 and you can keep track of yours.

24 BY MR. ROLFE:

25 Q Now, gentlemen, with respect to your testimony

Sim 2-6

1 concerning the economic benefit which LILCO claims through
2 the testimony of Mr. Nozzolillo, you did not perform an
3 independent study using your own input in formulating your
4 testimony, did you?

5 A (Witness Dirmeier) No, we did not. We based
6 our analysis on the analysis provided to us by LILCO.

7 Q And you used LILCO's model in doing so?

8 JUDGE MILLER: Pardon me. In what sense do you
9 mean model?

10 MR. ROLFE: I will clarify that. By model
11 I mean a computer program, if you will, the general arrange-
12 ment of input through a computer printout to arrive at
13 certain conclusions, and you used the same program, if you
14 will, that LILCO used?

15 WITNESS DIRMEIER: No, I did not. I don't
16 have LILCO's program. What I did is I took LILCO's data
17 and then I modeled it on my programs and achieved the same
18 output.

19 Primarily that is an exercise so that I can
20 understand what LILCO has and I can group the data in formats
21 that I am comfortable with.

22 JUDGE MILLER: Is that reflected in some of these
23 printouts or is that just assumed in the profession?

24 WITNESS DIRMEIER: No, sir. That is reflected
25 in the printouts on Exhibit LP-23.

Sim 2-7

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE MILLER: Thank you.

MR. SEDKY: If I may add something just to clarify the record, Judge Miller, because there may be some confusion.

JUDGE MILLER: Yes.

MR. SEDKY: LP-23 is the Georgetown Consulting Group's printout. I guess in order to understand the difference between their printout, and it is really mostly a matter of just how you group the numbers together rather than the numbers themselves, there is an Attachment 3 to the initial filing which was not marked as an exhibit only because of its bulk.

That is the computer run that Mr. Nozzolillo furnished to us in the discovery. And I guess if one wanted to compare the two runs, one would see in which maner the numbers were manipulated in different formats.

JUDGE MILLER: Thank you. That is helpful. If it is desired by any of the parties, I take it you will have access to the printout counsel mentioned which, because of bulk, it was not tendered, and properly so, but it is available if anyone needs it.

MR. SEDKY: He already has it.

JUDGE MILLER: Okay. Fine. Thank you.

BY MR. ROLFE:

Q It may be because of my lack of familiarity

Sim 2-8

1 with the terms of art that there is confusion here.

2 I understand that you did not have LILCO's
3 program, but in performing your own program you intended
4 to arrive at the same results and study the same set of
5 assumptions as LILCO used in Mr. Nozzolillo's testimony;
6 is that correct?

7 A (Witness Dirmeier) Well, I have certainly
8 adopted LILCO's assumptions. What I really intended to
9 do was to effectively model and understand the computations
10 that are embedded within LILCO's printout.

11 I did not test an alternative set of assumptions.

12 end Sim
13 e fols

14

15

16

17

18

19

20

21

22

23

24

25

#3-1-SueT 1

2 Q And in doing that, you used the same input as
LILCO used in its programs; is that correct, sir?

3 A (Witness Dirmeier) No, that's not really
4 correct. My input was LILCO's output.

5 JUDGE MILLER: That's neat. Does it mean
6 something?

7 BY MR. ROLFE: (Continuing)

8 Q Well, let me ask you, Mr. Dirmeier, I don't
9 think there is any dispute here. You do not have any
10 independent knowledge of the facts that went into Mr.
11 Nozzolillo's program; is that correct, sir?

12 A That's correct. And what I did do though is
13 by effectively what I call emulating LILCO's output, I was
14 able to test the assumptions, or test some of the conclu-
15 sions, that were reached by LILCO in its printout and in
16 its model and determined that I disagreed with some of
17 those conclusions.

18 Q I understand that you disagree, and we are
19 going to get to that in a minute. Right now I'm just
20 trying to establish where you started.

21 And if I understand what you are saying, you
22 started with Mr. Nozzolillo's program as your base?

23 A That's correct.

24 Q And you did not make any attempt to go directly
25 to LILCO's books to judge for yourself all of the numbers

#3-2-SueT1

and projections that were used in Mr. Nozzolillo's programs;
is that correct?

A No, that's not correct. We had data requests that we served on LILCO that would seek to test some of those assumptions and some of those numbers, and we did receive answers to those. So, we did attempt to do some verification.

Q You made the attempt but the attempt was unsuccessful and the result was that you did not have any independent access to those books; is that correct?

A That's correct.

MR. SEDKY: If I might be permitted, Mr. Rolfe, I just want to clarify for the record that the data request that Mr. Diemeier referred to were the second request for production, the second discovery request filed by Suffolk County in this proceeding.

BY MR. ROLFE: (Continuing)

Q Now, gentlemen, in your testimony and in your summary of the testimony yesterday, you testified that the result of Shoreham coming on line three months earlier, that would be in July 1985, and the assumptions we have used, would be that the rates for 1985 for LILCO's ratepayers would increase by approximately 165 million dollars; is that correct?

A (Witness Madan) Yes, that's correct.

#3-3-SueT 1

2 Q And that assumes that Shoreham would be treated
3 for ratemaking purposes conventionally; and that means that
4 all of Shoreham's costs would go immediately into the rate
5 base, or all of Shoreham's costs which will eventually go
6 into the rate base would go in immediately in setting rates;
7 is that correct?

8 A Yes, it assumes conventional ratemaking treatment
9 for Shoreham, and that 165 is just the three month impact,
10 if you would, of the Shoreham conventional rate treatment.

11 Q It's true, is it not, gentlemen, that there has
12 been a great deal of talk and proceedings to the effect
13 that there is likely to be a rate moderation plan such that
14 Shoreham will not be treated conventionally for ratemaking
15 purposes?

16 MR. SEDKY: Your Honor, I have to object to this
17 line of examination. In effect, he is cross-examining his
18 own witness. I mean, they are the ones who -- and is
19 attacking the credibility of his own witness. Their witnesses
20 are the ones who ran the models based on conventional rate-
21 making treatment, and now he seems to be saying: We are
22 challenging that assumption. And I think that's grossly
23 unfair to our side.

24 MR. ROLFE: Judge Miller, may I respond to
25 that?

LILCO's witnesses performed an analysis of the

#3-4-SueT

1 present worth of revenue requirements over a number of
2 years. And their analysis arrived at a conclusion based
3 on looking at a number of years.

4 The County's witnesses have attempted to extract
5 the treatment afforded in one particular year and to make
6 a point that the ratepayers will suffer based on LILCO's
7 assumptions in that particular year. I think leaving the
8 record with that misleading characterization -- in other
9 words, if we are going to make a point of looking at what
10 will in fact happen in one year rather than looking over
11 the continuum that LILCO postulated, then I think it's
12 important to put that in perspective.

13 JUDGE MILLER: What is the state of the record
14 of your own witness' testimony in that regard?

15 MR. ROLFE: LILCO's witness did not testify as
16 to whether or not that kind of rate treatment would be
17 afforded Shoreham. He assumed, to be conservative, that
18 the rate treatment afforded Shoreham would be conventional
19 rate treatment.

20 JUDGE MILLER: Yes.

21 MR. ROLFE: But he did not isolate the effects
22 on any particular year. And what Mr. Madan and Mr. Dirmeier
23 have said in their testimony is that the effects on the
24 ratepayers in 1985 would be that they would have to pay
25 165 million dollars more in rates. That's a misleading

#3-5-SueT 1

impression when the fact is that -- I think they will agree --
there is likely to be a rate moderation plan.

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

So, I think for completeness of the record, if you are going to try to isolate one aspect of LILCO's analysis and take it out of context and draw a conclusion from it, then it's not fair to just limit it to the assumptions that LILCO has made for purposes of running the analysis over a multi-year period.

JUDGE MILLER: All right. I think you should be permitted to have the record complete, but what portion of their testimony or their exhibits are you addressing it to? I think that's what we need in order to know its connection.

MR. ROLFE: I'm sorry, Your Honor. I misunderstood your question.

The portion of their testimony begins on -- actually the question begins on Page 10 and the answer begins on Page 10 and then goes over to Page 11, the first paragraph there.

JUDGE MILLER: Well, perhaps your question would be in a context the Board could better rule on if it were restated in some fashion to the way in which these gentlemen have handled some of the data, whatever it may be.

In other words, counsel is right. If you are trying to handle things differently from that of your own

#3-6-SueT 1

2 witness, certainly we would have to know why. However, if
3 I understand you correctly, you are saying that these
4 witnesses are handling it in a different fashion or carrying
5 it forward at any rate, and that you wish to rebut or address
6 that.

7 MR. ROLFE: Yes, sir.

8 JUDGE MILLER: You would be permitted to do that
9 provided you identify it.

10 MR. ROLFE: All right. Let me do that.

11 BY MR. ROLFE: (Continuing)

12 Q Gentlemen, if you would turn to the question and
13 answer at Pages 10 and 11 of your testimony, you will note
14 there that you have made the point that the revenue require-
15 ment for the year 1985 for a three month earlier commercial
16 operation date will be approximately 166 million dollars
17 more than it would be for an October 1, 1985 commercial
18 operation date; is that correct?

19 A (Witness Madan) Yes, that's correct,
20 assuming conventional rate treatment.

21 Q And in doing so, you have isolated in your
22 analysis the year 1985; is that right, sir?

23 A We have looked at 1985 directly off the output
24 that Mr. Nozzolillo used, subtracted the two numbers, in the
25 year 1985 under the scenario for early operation, shows an
increased revenue requirement of 166 million compared with

#3-7-SueT 1

the October date, the later date, right out of your own
run.

2
3 Q Yes, sir. And that 166 million dollar figure
4 does not include in any respect the benefits or the
5 differences in rates which would accrue from the differences
6 in revenue requirements for any of the years subsequent to
7 1985; is that right?

8 A It looks at the year 1985, that's correct.

9 Q In fact, LILCO's analysis looked at a multiple
10 of years; is that correct?

11 A LILCO's analysis presented data from the year
12 '84 through the year 2000.

13 Q And in arriving at your figure of 166 million
14 dollars more, you did not take into account the likelihood
15 of a rate moderation plan; is that correct?

16 A Well, when you mention the rate moderation plan,
17 you are now moving from the set of conditions Mr. Nozzolillo
18 gave us to perhaps what your impression is of the real world
19 now. That really gets much more complicated, because the
20 rate moderation plan is dependent, for example, on whether
21 the cap that the New York Public Service Commission has
22 recommended of 2.3 billion, if that cap were to go into
23 effect you would have a totally different set of circum-
24 stances and perhaps no rate moderation plan, perhaps a
25 rate moderation plan. You are going into a set of

#3-8-SueT 1

circumstances which is very uncertain.

2

And any rate moderation plan is going to be very contingent on your giving me more assumptions as to what you perceive the real world to be at this point.

3

4

5

Q Well, you would agree, would you not, that the effect of a rate moderation plan would be to put a cap on the rate increases in the first years of Shoreham's operation?

6

7

8

9

A No, sir, I don't agree with that at all.

10

11

12

Q Would you agree that the effect of a rate moderation plan would be to lessen the rate increase in 1985 from that likely to accrue under commercial operation?

13

14

15

16

MR. SEDKY: Your Honor, I must object to this again. I think we have gone -- you know, we have sort of given him a little leeway in terms of, yes, the assumptions that Mr. Nozzolillo used were conventional ratemaking.

17

18

19

20

21

22

They didn't alter those assumptions. The 166 million is based on the very same assumptions. I think it's unfair, and incidently way beyond the scope of the direct testimony, to get involved in issues about what the various scenarios might be using different hypothetical rate moderation plans.

23

24

25

If we are going to get into this, I think we are going to have to bring back Mr. Nozzolillo and have some examination of him as to how his models might vary with

#3-9-SueT 1

different assumptions.

2

MR. ROLFE: Judge Miller, the witnesses have agreed that unlike Mr. Nozzolillo they have isolated one year out of a number of years.

3

4

MR. SEDKY: That's a gross mischaracterization, Your Honor. They have repeatedly testified that they are using the same number. You've made the point that they took one year.

5

6

MR. ROLFE: Judge Miller --

7

JUDGE MILLER: Now, wait a minute. Don't both of them take the year 1985, possibly July 1 versus October 1, but the same year 1985, both in the testimony you proffered and in the testimony at the top of Page 11 that these witnesses have?

8

9

10

11

12

MR. ROLFE: They do. The difference is, Judge Miller, that LILCO's analysis relied on --

13

14

JUDGE MILLER: Conventional.

15

MR. ROLFE: That's correct, on conventional rate-making, but it looked at the effect on the ratepayers over time.

16

17

Now, what these gentlemen are trying to do --

18

JUDGE MILLER: Well, how did it look on the effect over time?

19

20

MR. ROLFE: Because it took the revenue requirements for each of the years, 1985 through the year 2000, and

21

22

23

24

25

#3-10-SueT

1 then it took the present worth -- in other words, it dis-
2 counted those back to present value and then it combined
3 all of that and came up with one comparison with one number
4 for all of those years.

5 Now, what these gentlemen are trying to do, or
6 have done, is to take one year and isolate it and say --

7 JUDGE MILLER: Well, why don't you ask them
8 questions using the same methods and the same data as
9 your witness used if you want to make a comparison?

10 Let's have apples to apples. You are really
11 giving me two different propositions I think. And I'm
12 saying we will let you cross-examine but it must be on
13 the terms of, if you say this is what they did, inquire and
14 make your record on it. Then, later on -- well, I'm not
15 going into later on. I've learned my lesson on that one.

16 (Laughter.)

17 end #3

18 Joe flws

19

20

21

22

23

24

25

1 MR. ROLFE: Judge Miller, I think the point
2 is --

3 JUDGE MILLER: Standing alone, what they
4 say is perfectly correct. Now you are attacking it in
5 certain ways, and perhaps you can put on other evidence
6 if you didn't have it made sufficiently clear by your
7 witness in chief.

8 But, nevertheless, what they say at the
9 top of page 11, \$166 more in 1985 than if ... under
10 the method they have used, that is correct, isn't it?
11 Under the method they have used.

12 MR. ROLFE: Yes, sir, but --

13 JUDGE MILLER: Then, if you want to go into
14 other matters, go with them into other methods, or other
15 results, or other data. Take them on their terms, just
16 as they say they have taken your evidence on its
17 terms. I don't think you can take what you did or didn't
18 do, and say therefore, they are restricted.

19 MR. ROLFE: Judge Miller, I am not trying
20 to restrict them. All I am trying to do --

21 JUDGE MILLER: What are you trying to do?

22 MR. ROLFE: I am about at the end of it
23 in any event. All I am trying to do is to say that if
24 we are isolating the year 1985, unlike what LILCO
25 did. Remember, LILCO took a whole continuum of years.

1 If we are isolating --

2 JUDGE MILLER: Whatever they did.

3 MR. SEDKY: Just to interject. Perhaps
4 Mr. Rolfe is confused. I don't want -- I would never
5 attribute his trying to mislead this Court. If he
6 looks at the computer runs of Mr. -- that Mr. Nozzolillo
7 produced that are Attachment 3, there will be a column
8 1985. 1985 commencing July -- assuming a July startup
9 and 1985 commencing an October startup.

10 If he looks at the column 1985, there will
11 be two numbers. If he subtracts those two numbers,
12 it will be 165 point something million dollars. Those
13 are LILCO's numbers, and that is all those people have
14 said. Sure they picked one year. Do you want to pick
15 2000 years, you pick 2000 years.

16 JUDGE MILLER: That is my understanding of
17 what the testimony is and the data is at this point.
18 You are entitled to cross examine, project, back up,
19 do anything you want within reasonable limitations.

20 MR. ROLFE: Judge Miller, I don't disagree
21 that that is what LILCO's number is. That is not my
22 point. My point is that --

23 JUDGE MILLER: How they got it?

24 MR. ROLFE: No, sir.

25 JUDGE MILLER: You don't disagree with the

1 number, and you don't disagree they got it. Now, you
2 are really narrowing it. What do you disagree with?

3 MR. ROLFE: I am not sure I disagree with
4 anything.

5 JUDGE MILLER: If you will withdraw your
6 Motion we will go --

7 MR. ROLFE: The point is, that by taking
8 one year out of the context of the continuum of years,
9 I think these witnesses are trying to make a point that
10 there will be this tremendous impact --

11 JUDGE MILLER: That is what they are saying
12 the figures show. Now, either you agree or disagree,
13 but you have to go ahead and examine them, not me.

14 MR. ROLFE: But my point is, if they are
15 trying to emphasize that point, then I think --

16 JUDGE MILLER: I know they are, but this
17 is argument.

18 MR. ROLFE: I think I am entitled to ask
19 them whether --

20 JUDGE MILLER: Then go ahead and ask them.

21 MR. ROLFE: I did. That is when counsel
22 objected.

23 JUDGE MILLER: But what did you ask them?

24 MR. ROLFE: I asked them whether in the
25 real world that that assumption is a valid assumption

1 based on all the talk of the rate moderation --

2 JUDGE MILLER: It doesn't matter. What you
3 are trying to lure us into is what you call the real
4 world, and we will be from here until Christmas on what
5 the real world is.

6 I do not want to get into the varying concepts
7 of the real world. Everybody thinks it is a little
8 different. I don't want that. I regard it as speculation,
9 ultimately on most of these things, and there are some
10 hard core data and analysis.

11 Let's just stick to that. That will keep
12 us busy. That real world really scares me, because
13 everybody has his own version. Once we start it, remember,
14 they are entitled to do the same thing. You opened the
15 door, and we let you.

16 So, therefore, in that sense, no, forget the
17 real world, but I don't think your testimony went into
18 it on those terms.

19 MR. ROLFE: All right. I understand the
20 Board's rulings, and I will go to a different topic, or
21 different question.

22 BY MR. ROLFE: (Continuing)

23 Q Mr. Madan or Mr. Dirmeier, do I understand
24 correctly that the reason that you get, under your
25 analysis, 166 million dollars more in revenue requirements

1 in 1985 under the July 1 commercial operation date as
2 opposed to the October 1, 1985 commercial operate date,
3 is because you are talking about the unit being in
4 service three months longer, and therefore the ratepayers
5 are paying rates based on Shoreham for three months
6 longer?

7 A (Witness Madan) It is based on a revenue
8 requirement analysis that Mr. Nozzolillo used, and it
9 assumes that those revenue requirements will be paid by
10 ratepayers.

11 Q And you agree, do you not, that under LILCO's
12 analysis, forgetting your recomputation for a minute, over
13 the long run LILCO's analysis shows that there will be
14 a benefit to the ratepayers in present worth terms from
15 the operation of Shoreham three months earlier?

16 A I guess your testimony says what it says.
17 Mr. Nozzolillo's position is that based on the assumptions
18 and analysis that he performed, he believes that if you
19 look at the years '84 through 2000, they will be in that
20 benefit. I don't agree with that, but that is what his
21 position is.

22 Q Well, in fact, looking at LILCO's printout,
23 looking at LILCO's program, and even under your analysis
24 in the year 1999, for example, in terms of actual dollars
25 in 1999, there would be a benefit from the operation of

1 Shoreham to the ratepayers, is that right?

2 A No, sir.

3 Q Would that be right for the year 2000?

4 A No, sir.

5 Q In LILCO's analysis, now?

6 A Well, you just said in LILCO's analysis and
7 your analysis, I heard you say.

8 JUDGE MILLER: You did.

9 MR. ROLFE: Let me ask the question, then,
10 in LILCO's analysis, since you are referring in your
11 answer to LILCO's analysis?

12 MR. MADAN: I think we went through that
13 in our summary. There is a detriment of a 166 million
14 dollars in the first year, and really the ratepayers
15 don't get that back until almost the turn of the century.
16 1998, in that timeframe.

17 BY MR. ROLFE: (Continuing)

18 Q And you would agree that under LILCO's analysis,
19 again, that in order to arrive at a benefit of eight
20 million dollars -- let's focus on the 1985 synchronization
21 date for a minute -- in order to arrive at a present worth
22 benefit of eight million dollars from the earlier commercial
23 operation date, that in terms of actual dollars the benefits
24 in 1999, year 2000, would be much greater than eight million
25 dollars, is that right, sir?

1 A In current dollars?

2 Q In terms of actual dollars.

3 A In terms of actual dollars?

4 Q Yes, sir.

5 A If you are saying actual dollars is higher
6 numerically than a discounted dollar, you are correct.

7 Q And, in fact, to offset that 166 million dollar
8 detriment that you see in the year 1985, the actual dollar
9 benefit in the years 1999 or 2000 would have to be
10 substantially greater than the 166 million dollar detriment,
11 is that right?

12 A I think that is true mathematically. Mr.
13 Nozzolillo agreed the correct way to do this kind of thing
14 was to use present value. We agree with him.

15 Q JUDGE MILLER: That was what Mr. Nozzolillo
16 testified to wasn't it, as you understood it.

17 Q Now, gentlemen, in referring to your disagreement
18 with LILCO's economic analysis, which shows a possible
19 benefit of from eight million to forty-five million dollars,
20 you cite at least three areas of disagreement if I am correct;
21 one deals with the postulation of a 1984 synchronization date.
22 The second deals with your view that there is a 28 million
23 dollar mismatch in LILCO's calculations, and the third, as
24 I understand it, deals with the failure of LILCO to take
25 into account the years beyond two thousand, is that an

1 approximate and correct summary of the three areas of
2 disagreement?

3 A (Witness Dirmeier) Yes, it is.

4 Q Now, I would like to focus for a moment first
5 on the first area of disagreement, which would be your view
6 that possible synchronization in the year 1984 ought to be
7 disregarded.

8 As I understand it, you gentlemen say that it
9 is unlikely that synchronization will occur in 1984, is
10 that correct?

11 A That is correct.

12 Q Do either of you gentlemen have any independent
13 knowledge of the scheduling of the Atomic Safety and Licensing
14 Board proceedings affecting the TDI diesel generators or
15 emergency planning proceedings?

16 A Perhaps I could ask you to tell me what you mean
17 by, 'independent knowledge.'

18 Q Well, have you reviewed the scheduling orders
19 in those cases?

20 A I have some understanding of what the scheduling
21 appears to be in the various cases.

22 Q Are you familiar with the schedule for licensing
23 hearings concerning the TDI diesel generators?

24 A I don't have them before me, and I am not
25 specifically familiar with what that scheduling entails.

1 Q Are you generally familiar with that schedule?

2 A I think in general I am familiar with the
3 schedules.

4 Q Are you aware that the Atomic Safety and Licensing
5 Board recently limited the number of contentions, and the
6 specific contentions which Suffolk County could litigate
7 in those proceedings?

8 A I am not specifically aware of those limitations.

9 Q Are you aware that Suffolk County has already
10 had to file its prefiled direct testimony in that proceeding?

11 MR. SEDKY: Your Honor, I am not sure that this
12 goes -- I think I know where Mr. Rolfe is going, and that
13 is that he is trying to explore the time frame that might
14 be involved. And I have no objection to that.

15 I guess it is beginning to sound like self-
16 serving characterizations of what the Board has done on the
17 merits to Suffolk County and so forth, which I think is
18 improper, because we might have a different view of what
19 the Board has done and so forth.

20 If you would just simply limit the inquiry to:
21 Do you know what the deadline is?; rather than: Are you
22 aware that the Board limited Suffolk County's ability to
23 do X, Y, Z., I would have no objection.

24 MR. ROLFE: Judge Miller, my question was simply
25 did he know that Suffolk County had already filed its

1 testimony. That is no characterization.

2 JUDGE MILLER: I think your question was whether
3 it had been required to file.

4 MR. SEDKY: Why don't you just ask the question
5 directly? Do you know when the cutoff is, when a decision
6 is supposed to be --

7 JUDGE MILLER: We are not going to get into this
8 now very deeply, because a, we don't want speculation dealing
9 on other matters that is not within these witnesses knowledge,
10 and maybe nobody's knowledge.

11 MR. ROLFE: Judge Miller, these witnesses
12 testimony in this area is based on their speculation that a
13 1984 synchronization is impossible. In fact, they say it
14 cannot occur. I think I am entitled to test --

15 JUDGE MILLER: Then why don't you establish that?
16 If that be their position, the basis of that line of
17 testimony, once you establish that, you can attack that in
18 any way that you want.

19 MR. SEDKY: It is on page 13, and what they
20 rely on is on page 13.

21 MR. ROLFE: Judge Miller, if you look in the
22 middle of page 13, in the answer -- well, if you start at the
23 beginning of page 13, the witnesses say: First, it is
24 clear that Shoreham will not be in service for tax purposes
25 during LILCO's low power testing program, and then they

1 go on in the middle of that paragraph --

2 JUDGE MILLER: You could sure impeach that by
3 showing it is nowhere near clear and why? What more do you
4 want to do, stomp on them?

5 MR. ROLFE: No, sir. I am going -- and then
6 they go on to say: Thus, it does not appear to be possible
7 for Shoreham to be in service for tax purposes in 1984.

8 I was just exploring these witnesses knowledge
9 as to --

10 JUDGE MILLER: You can ask what they base it on,
11 and then there it is, lying up there for you to shoot at
12 if you want to.

13 MR. ROLFE: Well, rather than asking what they
14 base it on, because I have been taught that you don't ask
15 witnesses open ended questions like that on cross examination.

16 JUDGE MILLER: You do when you are the lawyer
17 and they are talking about legal matters and procedures.
18 There you have got the edge.

19 MR. ROLFE: Your Honor, I did ask them whether
20 they had seen the scheduling orders. I was told --

21 JUDGE MILLER: Why don't you find out what their
22 basis -- you know, hyperbole never helps anybody. I have
23 told you that. I will tell everybody else that. When
24 it is real clear. Find out what it is based on. You have
25 your record. It is wide open for you to go after it if

1 you have the data, or in this case, with legal and procedural
2 questions, I am not going to tell you how to try a law suit.

3 MR. ROLFE: Well, Judge Miller, I apologize if
4 I have engaged in hyperbole. I didn't think that I did.

5 JUDGE MILLER: That is what you did sometimes
6 with your witnesses. That is what gave us some trouble
7 yesterday. Now, I am past that, and I think when something
8 is real clear and involves what Boards are going to do
9 and so forth --

10 MR. ROLFE: That is all I was asking these
11 witnesses.

12 JUDGE MILLER: You are not asking that. You
13 are going into a whole series of things do they know.
14 Some of the things they don't know, some they know
15 generally, how does that help the Board? The basis for
16 why they say it is clear it will not be in service during
17 this time. Pinpoint those bases. Then they are subject
18 to your own -- whatever you want to do with them.

19 BY MR. ROLFE: (Continuing)

20 Q Gentlemen, what is your basis for saying that
21 it is clear that Shoreham will not be in service for tax
22 purposes in the year 1984?

23 A (Witness Dirmeier) I think there are a number
24 of bases for that statement. First of all, or at least in
25 order, our understanding is that LILCO has assumed that

1 Shoreham could be in service for tax purposes in 1984, if
2 it is synchronized with the electric grid and producing
3 more power than it is consuming. And in one of the runs
4 that Mr. Nozzolillo received from his engineering planning
5 department, they showed a net positive output for the month
6 of December.

7 So he, therefore, assumed that it would be in
8 commercial service for tax purposes in 1984. Our experience
9 has been with other units that they are generally declared
10 in service for tax purposes much more close to the time where
11 they are actually declared in commercial service, and as I
12 understand it, this unit is assumed to be in commercial
13 service July 1, 1985, for the early start option. That is
14 one basis.

15 A second basis is that it is my understanding
16 that there are some security aspects of these hearings, the
17 schedule of which presently indicates that a decision would
18 be issued some time toward the end of November. If that
19 occurs, then the Company would only be in the beginning of
20 the low power testing in December, and would not have achieved
21 what it claims to be connection to the grid. It is my
22 understanding that the connection to the grid will not occur
23 during low power testing.

24 Another area is that there are a number of areas
25 or issues facing the Company that can severely impact the
schedule for Shoreham's low power testing. There are the

4-14-Wal

1 planning dockets. There is the diesel docket. I note that
2 the Company currently has a strike from its employees, so
3 that there are a significant number of employees, almost
4 four thousand who are not working today, and the Company is
5 in severely affected financial condition, which I think can
6 have a significant affect on the ability of the Company to
7 continue with its procedures and its activities at Shoreham.

8 This last one is a very severe item. We know
9 that the Company has projected innumerable times that it
10 will run out of cash in September --

11 MR. ROLFE: Objection.

12 JUDGE MILLER: Overruled.

13 MR. ROLFE: I think the witness is going beyond
14 the scope of the question. He has outlined his basis, and
15 now he is trying to get into the financial qualifications
16 evidence any way he can.

17 JUDGE MILLER: We will strike both of your
18 comments. In that regard.

19 End 4.
20 Mary fols.

21

22

23

24

25

26

Sim 5-1

1 MR. SEDKY: I assume it is just the latter part
2 of the witness' answer.

3 JUDGE MILLER: Yes, just the latter part.

4 BY MR. ROLFE:

5 Q Now, Mr. Dirmeier, you mentioned that security
6 contentions in this proceeding were a possible cause of
7 not being able to synchronize the plant in 1984.

8 It is a fact, is it not, sir, that no security
9 contentions have yet been admitted?

10 A (Witness Dirmeier) I don't know whether that
11 is a fact or not, Mr. Rolfe. I have had some discussions
12 with counsel who have indicated to me that there has been
13 a security issue raised and a schedule prepared for dealing
14 with that security issue, if in fact it develops.

15 So my answer is, as I understand it, it is not
16 even clear that a security issue has developed, but that
17 there is a schedule for dealing with it if it does come
18 up.

19 Q So there is some uncertainty in that area?

20 A Certainly there is.

21 Q And, similarly, you would agree, I take it,
22 that there is some uncertainty as to when the emergency
23 planning proceedings will be concluded?

24 A I think I would agree that there is uncertainty
25 regarding the conclusion of any of these proceedings. My

Sim 5-2

1 experience has been that the uncertainty, unfortunately
2 perhaps from your point of view, generally tends to go long
3 rather than short.

4 Q And I take it you would agree that there is
5 uncertainty concerning the conclusion of the TDI diesel
6 licensing proceedings?

7 A Yes.

8 Q And there is uncertainty as to when the current
9 strike of LILCO's employees will end?

10 A Clearly.

11 Q Now the second component of your disagreement
12 with LILCO's benefit analysis, and I am referring to
13 your testimony I believe at pages 16 and 17 of your prefiled
14 testimony, it is based on your view that there is a \$28
15 million mismatch, I believe was your term, in LILCO's
16 analysis; is that right, sir?

17 A Yes.

18 Q And your opinion of this, as I understand, is
19 based on your review of the computer runs performed by
20 LILCO?

21 A Yes. The runs show \$59 million as being the
22 change in the capitalized cost of the unit between operating
23 it in July and operating it in October, but they only show
24 a \$31 million difference in the amount that is expensed
25 between a July start and an October start. Those are from

Sim 5-3

1 the computer runs.

2 Q Now, Mr. Dirmeier, do I understand that you
3 arrive at that alleged mismatch based on your view that
4 a reduction in precommercial operation capitalized expendi-
5 tures for the July 1 in-service date ought to be reflected
6 in a comparable increase in post-commercial operation
7 expenses of the same amount?

8 A Yes.

9 Q Maybe so we can help everybody, including
10 myself, try to understand what we are talking about, and
11 forgive me if I get a little bit elementary here, but am
12 I correct that before commercial operation of the Shoreham
13 plant all expenditures related to the plant are capitalized
14 for accounting and rate-making purposes?

15 A Yes.

16 Q And that is because until the plant goes into
17 commercial operation LILCO is not allowed to bring the
18 costs of the plant into its rate base and charge customers
19 rates based on the costs of the plant; isn't that right?

20 A Substantially right.

21 JUDGE MILLER: Are there any qualifications
22 that would be helpful to the Board? I am not asking you
23 to be technical, but maybe there is something.

24 WITNESS DIRMEIER: Well, as an example, at this
25 point in time there are \$355 million of Shoreham's costs

Sim 5-4

1 included in the rate base upon which the customers are
2 paying a revenue requirement of approximately \$70 million.

3 But for the purposes of his question, he is
4 right.

5 JUDGE MILLER: I see. Okay. Thank you.

6 BY MR. ROLFE:

7 Q The bulk of the costs can't go into the rate
8 base until commercial operation?

9 A (Witness Dirmeier) That is correct.

10 Q So when we talk about the capitalized expenditures,
11 we are talking about all of the costs up until the date
12 of commercial operation, would that be accurate?

13 A Yes.

14 Q And those costs would include more than what
15 as a layman I might think of, or any layman might think
16 of as capital investment costs?

17 A You will have to give me an example.

18 Q Well, generally in accounting, am I correct
19 that capital investments such as costs of construction and
20 costs of equipment, costs of things that get depreciated
21 are accounted for differently than expenses, which would
22 be operating and maintenance expenses?

23 A Well, they are accounted into different accounts
24 on the company's financial records. When you capitalize
25 an item, you treat it as an asset. So it goes into the

Sim 5-5

1 company's balance sheet, and later on when it goes into
2 service it is depreciated, and that depreciation transfers
3 those costs to the income statement, rather than having
4 expensed them in the income statement when they were
5 incurred. So they are put in different accounts.

6 Q Yes, sir, that is right. And those items that
7 would be depreciated that I would consider capital investment,
8 for example, are funds that go into tangible items, things
9 that are built, equipment and machinery and that kind
10 of thing. Would that be an accurate characterization? I
11 am not trying to limit it, but just for purposes of
12 discussion.

13 A Those are certainly some of the items that
14 you capitalize.

15 Q And for purposes of discussion again so that
16 we can understand these concepts, they would be different
17 than day-to-day expenses such as payroll expenses, insurance
18 and those kinds of items. Would you agree with that?

19 A Well, the payroll for the people who are working
20 on the plant would not be treated as an expense, but would
21 be treated as a capital item because the labor of the
22 people working on the plant, LILCO employees, for example,
23 is a part of the creation of that capital asset. So that
24 labor, the people working on the plant, is capitalized,
25 is properly capitalized.

Sim 5-6

1 You may think of it as an expense because it has
2 to do with people, but it is really a capital asset.

3 Q Okay. Well, I didn't mean to characterize that
4 and get into that level of detail.

5 You will agree with me that there are expenses
6 that are proper expenses, things like insurance, for
7 example, that is an operating expense?

8 A Yes, insurance is an operating expense, except
9 that some portion of insurance is capitalized.

10 JUDGE MILLER: That which contributes to the
11 construction of the assets from which you are going to get
12 revenue later?

13 WITNESS DIRMEIER: That is correct.

14 JUDGE MILLER: Those that are intimately related,
15 plus the physical things are really what he is talking
16 about in large, isn't that about it?

17 WITNESS DIRMEIER: That is correct.

18 JUDGE MILLER: I see. I think I understand it.

19 WITNESS MADAN: Until such time as it goes
20 into service it is capitalized and it is expensed later.

21 JUDGE MILLER: I see.

22 WITNESS DIRMEIER: That is right, and once the
23 plant goes into service, those items are separated so that
24 expenses such as payroll would be reimbursed for rate purposes,
25 or considered for rate purposes in the year in which they

Sim 5-7

1 are incurred; is that right?

2 WITNESS DIRMEIER: Yes. Once the plant is in
3 service, the cost of paying the operators and the mainte-
4 nance personnel and the costs of their insurance and their
5 benefits and all of those items would then be proposed by
6 the company in a rate proceeding for recognition by the
7 Commission.

8 BY MR. ROLFE:

9 Q And once the plant goes into service, any
10 additional capital costs are still capitalized over time;
11 is that right?

12 A (Witness Dirmeier) That is correct. Any
13 post-completion capital expenditures would then be
14 capitalized.

15 Q All right. Now in focusing on this alleged
16 \$28 million mismatch, you say that the reduction in pre-
17 commercial operation capitalized costs should equal the
18 post-commercial operation increase in expenses, assuming
19 a July 1, '85 commercial operation date; is that right?

20 A Yes. I think the changes in capital expenditures
21 should be equal to the changes in expensed items.

22 Q And by expenses in the post-commercial operation
23 scenario one would have to include in that capital expendi-
24 tures also, would one not, in order to be comparing apples
25 and apples rather than apples and oranges?

Sim 5-8

1 A In expenses one would have to include the
2 capital items?

3 Q Let me try to rephrase that question if it
4 was confusing, and it may have been confusing.

5 As I understand what you have said, before
6 commercial operation all expenditures, substantially all
7 expenditures, and we will say all for our purposes, are
8 capitalized, they are included in the books costs of the
9 plant; is that right?

10 A Before commercial operation?

11 Q Right.

12 A Yes.

13 Q After commercial operation all the expenditures
14 are not capitalized. Expenses are treated as expenses
15 and go into the rate base for the year in which they are
16 incurred. Capital costs are treated as capital costs and
17 are capitalized over time for rate purposes.

18 A Recovered over time for rate purposes.

19 Q Now if one were to compare the pre-commercial
20 operation capitalized expenditures and look for the
21 equivalent level of funds or expenses or expenditures on
22 the other side of the equation, the post-commercial operation
23 expenditures, we would have to look at all of the elements
24 that went into the pre-commercial operation capital
25 expenditures, would we not, or otherwise we wouldn't be

Sim 5-9

1 comparing the same things?

2 A Well, I am not sure what you are trying to
3 ask, but I guess my answer is you need to look at everything
4 before and after, and you make the comparison and you
5 say the models received from the company say look, if we
6 complete Shoreham and go into service in July, it will cost
7 in cash terms \$59 million less.

8 Then you look at the months of July, August
9 and September in effect by looking at the change in the
10 total year, and the case expenses are only \$31 million more.
11 So there is a \$28 million mismatch in the analysis. And
12 to the extent that that analysis takes account of everything
13 that is going on with the plant, which is to say it includes
14 all the capital items in 1985 and all the expense items
15 in 1985, it does take account of all of those items.

16 Q Okay. Well, you have gotten a little bit
17 ahead of me because I haven't gotten to the actual numbers
18 yet. I am just trying to set up the framework.

19 But as I understand what you told me, if we
20 could separate and use the same categories you have used
21 in your table in looking at the Shoreham cash investment,
22 which as I understand it would be the capitalized expendi-
23 tures for Shoreham incurred before commercial operation,
24 is that right, if you look at the table in your testimony
25 on page 17?

Sim 5-10

1 (Pause.)

2 A Yes. The numbers on the table on page 17, on
3 the top line, are the cash investment in Shoreham taken
4 from the company's computer runs.

5 Q And that would include, again for our purposes,
6 all the costs of Shoreham before commercial operation,
7 right?

8 JUDGE MILLER: By the way, which exhibit is
9 that that you are referring to?

10 MR. ROLFE: We are talking about page 17 of the
11 testimony, Your Honor.

12 JUDGE MILLER: Oh, of the testimony. I thought
13 it was an exhibit.

14 MR. ROLFE: There is a table at the top of the
15 page.

16 JUDGE MILLER: Yes, I see it.

17 WITNESS DIRMEIER: Mr. Rolfe, the amounts there,
18 the amounts for October 1, 1985 and for July 1, 1985, the
19 notation of October 1, 1985 refers to the run that assumes
20 in service October 1, 1985. The notation for July 1, 1985
21 relates to the run for July 1.

22 The amounts are as of the end of 1985 from the
23 company's computer runs on page 43. So if there are in
24 the model any post-completion expenditures for the period
25 of October through December or July through December, they

Sim 5-11

1 should be included in those amounts.

2 BY MR. ROLFE:

3 Q Well, all I am trying to ask you right now is
4 am I correct that the Shoreham cash investment means all
5 of the costs of Shoreham up until the time it goes into
6 commercial operation?

7 JUDGE MILLER: In the company's computer run?

8 MR. ROLFE: In the company's computer run and
9 in his table which reflects the company's computer run,
10 according to him.

11 WITNESS DIRMEIER: Yes, I believe those amounts
12 are the in-service amounts at the time of commercial
13 operation.

14 BY MR. ROLFE:

15 Q And those in-service amounts as you refer to
16 them would include items which after commercial operation
17 would be split up into accounts for operating and maintenance
18 expense, property tax and capital items; is that right?

19 A (Witness Dirmeier) Just to be sure I understand,
20 are you really in effect asking, for example, what is in
21 the \$2 billion 675 million?

22 Q Yes, sir. I am asking whether that would
23 include it.

24 A Okay. That includes such things as brick and
25

Sim 5-12

1 mortar, steel and all of the things that you can touch and
2 tap. It includes capitalized labor, which is the labor, or
3 the time value of the people who worked to put the steel
4 together and the bricks together to make the buildings
5 and complete the installation of all of the facilities. It
6 includes insurance relating to their time. It includes
7 consulting fees and it includes capitalized amounts for
8 return.

9 No, excuse me. This is a cash investment and
10 that does not include capitalized return.

11 JUDGE MILLER: Does not include?

12 WITNESS DIRMEIER: Yes. Because this is the
13 cash investment. The overall investment, the \$4.1 billion
14 you oftentimes hear about, includes the capitalized return,
15 and this does not.

16 JUDGE JOHNSON: But this column also includes
17 those expenses related to people costs such as payroll
18 and insurance and so forth only preceding July 1, 1985;
19 is that correct?

20 WITNESS DIRMEIER: That is my understanding
21 of what that would include.

22 JUDGE JOHNSON: And after that they become
23 operating expenses?

24 WITNESS DIRMEIER: Yes. After that they are
25 expenses, and for the most part they are expenses, because
they are still post-completion expenditures. But this

Sim 5-13

1 doesn't include those post-completion expenditures, as
2 I understand it.

3 JUDGE JOHNSON: So they should show up then in
4 the next line, or whatever?

5 WITNESS DIRMEIER: Yes.

6 JUDGE JOHNSON: Thank you.

7 BY MR. ROLFE:

8 Q Now focusing still on the Shoreham cash invest-
9 ment line of your table at the top of page 17, the column
10 entitled "Change" reflects the difference between the July
11 1, 1985 commercial operation date and the October 1, 1985
12 commercial operation date in the total Shoreham cash invest-
13 ment; is that right?

14 A (Witness Dirmeier) Yes. The 59 is a negative
15 number. It is the reduction in the cash investment if it
16 starts in October versus July.

17 end Sim
18 Sue fols
19
20
21
22
23
24
25

#6-1-SueT 1

2 Q And another way to characterize that would be
3 that the 59 million dollars reflects the increase in
4 capitalized expenditures over the three month period we
5 are studying; is that accurate?

6 A (Witness Dirmeier) Yes.

7 Q Now, let's look at the second portion of your
8 table which, as I understand it, looks at the post-commercial
9 operation of Shoreham; is that right.

10 A (The witness is looking at document.)

11 No, that's not exactly correct. The O&M
12 expense, which in the first column is 257.1 million, is
13 the operations and maintenance expense for the year 1985,
14 assuming an October 1, 1985 commercial operation date for
15 Shoreham. So, it's not just the post; it is for the year.

16 MR. ROLFE: Your Honor, may I beg the Board's
17 indulgence for one moment, please?

18 JUDGE MILLER: Well, we can take our morning
19 recess if it would be helpful to everyone. Let's take
20 fifteen minutes.

21 MR. ROLFE: Okay. Thank you.

22 (Whereupon, the hearing was recessed at 10:11 a.m.,
23 to reconvene at 10:26 a.m., this same date.)

24 JUDGE MILLER: All right. Are we ready to
25 resume? What happened to our Staff?

(Pause.)

#6-2-SueT 1

Let's go ahead. They can read it.

2

(Counsel, Mr. Perlis and Mr. Zahnleuter, are not

3

present in the courtroom.)

4

JUDGE JOHNSON: Before you resume, Mr. Rolfe,

5

I would like to ask a couple of questions of these

6

witnesses, please.

7

MR. ROLFE: Please, do, Judge Johnson.

8

BOARD EXAMINATION

INDEXXX 9

BY JUDGE JOHNSON:

10

Q Have either of you ever appeared in any other

11

NRC proceedings?

12

A (Witness Dirmeier) I have not.

13

(Witness Madan) No, Your Honor, we have not.

14

Q And no member of your organization has?

15

A (Witness Dirmeier) I don't believe so, no.

16

JUDGE JOHNSON: Thank you.

17

BY MR. ROLFE: (Continuing)

18

Q Gentlemen, before the break I had asked a

19

question. We were focusing on the second part of the table

20

at the top of Page 17 of your prefiled testimony, and I

21

had asked a question about the O&M expense shown in that

22

portion of the table.

23

I believe, Mr. Dirmeier, you had told me that

24

that O&M expense represented the total O&M expense for the

25

Company for the year 1985; is that right, sir?

#6-3-SueT 1

A Yes, under each of the various assumptions.

2

Q And then in your middle column, you reflect the difference between the O&M expenses for -- strike that.

3

4

Let me ask this. With respect to Shoreham, the amount of that O&M expense would only pertain to Shoreham's post-commercial operation phase; is that right?

5

6

7

A It should.

8

(Mr. Perlis entered the courtroom.)

9

Q Because anything before that would have been reflected in the capitalized expenditures for Shoreham or the Shoreham cash investment?

10

11

12

A That's correct.

13

14

15

16

17

Q Now, in the middle column, entitled "Change" you show the figure 16.1 million dollars. And I take it that represents the change in O&M expense for the Company between the July 1, 1985 commercial operation date for Shoreham and the October 1, 1985 commercial operation date for Shoreham?

18

19

20

21

A Yes.

Q And is it also correct that that change would be attributable to the difference in the O&M expense attributable to Shoreham?

22

23

24

25

A That's correct.

Q Because all the other O&M expenses for the Company under the analysis would remain constant; that's the only variable in the equation?

#6-4-SueT 1

2 A Well, I think that the Company has not changed
3 in its model all the other O&M for all the other plants
4 between the two alternatives. It's probably likely that
5 the O&M would change, but it hasn't changed in the model,
6 as I understand it.

7 Q So, for purposes of the analysis that 16.1 million
8 dollars represents the difference in Shoreham O&M expenses
9 over that three month period?

10 A Yes.

11 Q And I take it the same would be true with
12 respect to the property tax line?

13 A The property tax line is Shoreham-specific.

14 Q So the 15 million dollar difference is the
15 difference in Shoreham property taxes over the three month
16 period resulting from the three month earlier commercial
17 operation date?

18 A Yes.

19 Q Now, it's true, is it not, Mr. Dirmeier, that
20 there is no line in the second part of that table for
21 bricks and mortar, as you call it?

22 A There is no bricks and mortar in the second line,
23 you mean, in the O&M or the property tax?

24 Q In the second part of that table, yes, sir.

25 A That's correct. There is no line in that second
part of the table for bricks and mortar.

#6-5-SueT

2 Q Did you consider the difference in capital costs
3 for Shoreham over the three month different commercial
4 operation dates?

5 A Yes, I did. In the models that I used, which
6 were the models that I first received from the Company,
7 the Shoreham retrofit or post-completion expenditures, is
8 the same in either scenario.

9 Q Yes, sir. And you are aware, are you not, and
10 I believe you testified yesterday that you were aware that
11 Mr. Nozzolillo had changed his models somewhat in arriving
12 at the conclusions which he actually expressed in his
13 testimony?

14 A Yes, I am aware of a number of changes and
15 assumptions and in the model between what we received at
16 the deposition of Mr. Nozzolillo versus what we received,
17 I think it was, literally two or three days before we had
18 to file testimony.

19 Q Yes, sir. And yesterday you testified when you
20 were asked: Do these adjustments that Mr. Nozzolillo
21 testified to and the economic runs that he ran impact in
22 any material way the testimony that you prepared? And
23 you answered: No, they do not.

24 Do you recall that?

25 A I did testify to that, but they don't change
my conclusions.

#6-6-SueT

1 Q And you did have access to those new runs before
2 you testified. In fact, you had access to those new runs
3 a few days before your testimony was filed; is that right?

4 A That's correct.

5 Q And you have reviewed those?

6 A I have since reviewed those.

7 Q Do you have those with you?

8 A Not right here.

9 (Mr. Earley is passing out computer printouts
10 to the Board members and all counsel present.)

11 MR. ROLFE: For the Board's information, I will
12 represent, because I am not sure Mr. Madan and Mr. Dirmeier
13 would have the time to go through and verify independently
14 that these are the same identical runs that they were
15 provided, but I will represent to the Board that these are
16 the runs upon which Mr. Nozzolillo based his testimony and
17 which were provided to Suffolk County and ultimately to
18 Messrs. Madan and Dirmeier, and to which I believe Mr. Madan
19 and Mr. Dirmeier have referred, both yesterday in their
20 direct testimony and just now.

21 BY MR. ROLFE: (Continuing)

22 Q Now, Mr. Dirmeier, you have before you now two
23 runs, two computer runs or two computer printouts, one is
24 for the case assuming that Shoreham goes into commercial
25 operation on July 1, '85 and the other assumes that Shoreham

#6-7-SueT1

1 goes into commercial operation on October 1, '85; is that
2 correct?

3 A (Witness Dirmeier) Yes.

4 Q Although I know you have not had time to review
5 the entire program, do you have any reason to dispute
6 that these are the runs that you were provided before?

7 MR. SEDKY: Your Honor --

8 JUDGE MILLER: Sustained.

9 MR. SEDKY: We will accept counsel's representa-
10 tion.

11 (Mr. Zahnleuter entered the courtroom.)

12 MR. ROLFE: That's fine. Thank you, counsel.

13 JUDGE MILLER: Okay.

14 BY MR. ROLFE: (Continuing)

15 Q Mr. Dirmeier, can you please turn to the portion
16 of both of those computer runs which addresses Shoreham
17 retrofits?

18 JUDGE MILLER: Could you help us a little bit on
19 where they might appear?

20 MR. ROLFE: Yes, Your Honor. I believe it's on
21 the second page of the run you have before you, at the top
22 of the page --

23 BY MR. ROLFE: (Continuing)

24 Q Mr. Dirmeier, at the top of the page there is
25 an account listing, it says PFE01AR. If you have got that

#6-8-SueT1

page then you go down about two-thirds of the way down the page and you will see an entry that begins PFE03BG, and then in brackets it says Shoreham retrofit.

Do you see that, gentlemen?

A Yes.

MR. ROLFE: Has the Board had an opportunity to locate that?

JUDGE MILLER: Yes.

BY MR. ROLFE: (Continuing)

Q First of all, Mr. Dirmeier, do you agree that Shoreham retrofits is the account describing post-commercial operation capital expenditures?

A Yes.

Q Now, if you will look at the line right after the words "Shoreham Retrofit" that is the account for the retrofits; is it not, sir?

A Yes.

Q And for the Board's understanding, am I not correct that the various numbers shown there correspond to the amounts for each year that the model considers?

A Yes.

Q So that the zero, for example, on the -- the first zero on that line would mean that there would be no capital -- no Shoreham retrofits for the year 1984?

A Yes.

&6-9-SueT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q And then the second number on each of those would show the retrofits for the year 1985?

A Yes.

Q And do you agree, Mr. Dirmeier, that for the computer run for the July 1, 1985 in-service date that Shoreham retrofits are shown to be 22.7 million dollars?

A Yes.

Q And on the run for Shoreham retrofits for the October 1, 1985 in-service date, the Shoreham retrofits are shown to be 11.4 million dollars for the year 1985?

A Well, I would agree that it is 11.4 in this version of the runs for October 1, 1985. I just want to reiterate what we are dealing with is two sets of runs for July and October.

And in this later sets of runs, retrofit is a difference. In the first set of runs, it was not different.

Q I understand. And you testified already that you understood that Mr. Nozzolillo's testimony was based on a revised run and that you had reviewed the revised run and that it did not affect your testimony; is that right?

A Yes. It doesn't change my conclusions.

Q There is on the runs Mr. Nozzolillo relied on a difference in the capital expenditures for post-commercial operation, is there not?

A Yes.

#6-10-Sue1T

2 Q And that ought to be included when comparing the
3 post-commercial operation expenses with the pre-commercial
4 operation at Shoreham cash investment, ought it not?

5 A Yes. Certainly if we had testified vis-a-vis
6 these runs, we would have included that difference.

7 Q So, if we were to include that difference now
8 the difference or the 31.3 million dollar change that you
9 reflect in the table and on top of Page 17 ought to be
10 increased to approximately 42.5 million dollars, ought it
11 not?

12 A Well, you are trying to overlay a change in
13 these runs against a change in the earlier runs, and I
14 think what you should do is restate the entire schedule,
15 not adding one specific line.

16 So, I can't just agree to that without having
17 done the whole schedule over again.

18 Q Well, if you would like to take the time to
19 review the equivalence of the numbers in your table, the
20 other numbers with the numbers shown on the runs that
21 were provided you, please feel free to do so.

22 I think you will find they are the same.

23 A Well, my understanding is that there were a
24 number of changes throughout the model. There was a
25 change in the discount rate; there were changes in some
of the expense lines, so that there are subsidiary changes

#6-11-SueT1

2 that result from this change in capital, and in cost of
3 debt, and so on. I don't -- you know, it may be that those
4 two years, the years 1985 in the two different models, are
5 the same.

6 But there are other changes in the models be-
7 tween this version of the models and the prior version of
8 the models.

9 Q Then, your testimony does not address the
10 analysis which Mr. Nozzolillo used in his testimony; is
11 that correct?

12 MR. SEDKY: Your Honor, I hate to object to this.
13 It's a mischaracterization of his testimony. He says that
14 he looked at the revised model that was furnished to him
15 and that it did not impact his conclusions. And that is
16 still his testimony.

17 MR. ROLFE: I'm just asking him, Your Honor,
18 he tells me that the models are different and therefore
19 you can't compare them to this table.

20 MR. SEDKY: It has been asked and answered,
21 Your Honor. He has asked it at least twice. And I asked
22 it of him --

23 JUDGE MILLER: Let's have one final answer here.
24 You may answer.

25 WITNESS DIRMEIER: Well, as I stated earlier,
I did do an analysis, or I did look at these new models and

#6-12-SueT

2 these new runs and they don't change our conclusions. They
3 change some of the numbers that lead to the conclusions,
4 and the computations can be updated. But the conclusions
5 I think are still the same, that there, in our opinion,
6 is no economic benefit for the early operation of the
7 Shoreham unit.

8 The numbers have changed. Many of the numbers
9 have changed. But the scope and the general direction of
10 the numbers has not changed.

11 JUDGE MILLER: I think that's about the state
12 of the record.

13 MR. ROLFE: Judge Miller, I assume that pursuant
14 to our past practice as modified by your comments before
15 we embarked on the cross-examination of these witnesses,
16 you would prefer that I withhold any motions to strike on
17 this portion of the testimony until I concluded this
18 portion of the cross-examination?

19 JUDGE MILLER: Yes, but we would like to handle
20 this portion as a separate segment if we could, completing
21 cross, redirect, motions both ways, so we can handle those
22 things before us. I think it's reasonably related.

23 MR. ROLFE: I will do it that way then, sir.

24 BY MR. ROLFE: (Continuing)

25 Q Mr. Dirmeier, would the new runs that you have
been provided and upon which Mr. Nozzolillo based his

#6-13-SueT1

2 testimony which you purport to comment on change the numbers
3 in the table in your testimony on Page 17?

4 A I think I already indicated that the table on
5 Page 17, if it were based on the new runs, after review
6 of the Shoreham retrofit would probably include a line for
7 Shoreham retrofit.

8 I would have to do some analysis to determine if
9 I agreed that the Shoreham retrofit changes between the
10 July run and the October run are appropriate. It appears
11 you are assuming, or that the model is assuming, for
12 example, that these are linear as opposed to maybe being
13 fluctuating throughout the year.

14 It also assumes, for example, that the change
15 in 1985 Shoreham retrofit doesn't have any impact on any
16 other year. So, I have some concerns about that.

17 But in general these new models do address one
18 of the differences between what has happened to the capital
19 account and what has happened to the expense account.

20 Q Mr. Dirmeier, if you would like to look at the
21 retrofits line for 1986, for example, don't you find that
22 there is no change in subsequent years in the retrofits
23 for Shoreham?

24 A That was my point. There is no change, and I
25 think that perhaps there should be a change.

What we are doing is, you are taking one model

#6-14-SueT

1 that looks at the twelve -- that starts Shoreham in July
2 and another model that starts Shoreham in October and says:
3 Well, fine. 1985's retrofits will change but not 1986.

4 And it may be that all of the retrofits going
5 throughout the year should change a little bit. Maybe not.
6 I'm just not going to give a blanket approval that says:
7 Everything is fine. You fixed 1985 and there is no problem
8 in '86 and so on.

9 It's easy to go through these models and make
10 a one line change and say that takes care of all the problems.
11 But there are a lot of changes that may follow from that,
12 and assumptions do change as you move forward.

13 In effect, what I'm saying is there is nothing
14 that necessarily gives more validity to these runs than
15 to the first runs.

16 JUDGE MILLER: Or less.

17 WITNESS DIRMEIER: Or less.

18 JUDGE MILLER: It's neutral on that point.

19 WITNESS DIRMEIER: Yes.

20 BY MR. ROLFE: (Continuing)

21 Q In your opinion?

22 A In my opinion.

23 Q And you have no -- strike that.

24 Now, assume with me for a minute, Mr. Dirmeier,
25 that the runs you have been provided previously are correct

#6-15-SueT

1 and that that 11.4 million dollar difference in retrofits
2 ought to be included in your change column, in that case
3 your change in the lower part of your table would reflect
4 approximately 42.5 million dollars between the two cases;
5 is that right?

6 A No, because if I assume that the earlier runs
7 were correct then the earlier runs would have to be updated
8 to include that change and it might change other items as
9 well. What you are doing is saying, assume that the runs
10 that are in our Appendix 3 and that are summarized in the
11 Exhibit LP-23 are corrected for the Shoreham retrofits,
12 even though I know they are not, and then say what change
13 does that do to your schedule.

14 I think you have to rerun the runs.

15 Q Well, assume that the -- let's look at the other
16 figures then that you use in your table. Can you find in
17 the runs you have before you the O&M expenses for both
18 computer runs for both commercial operation dates?

19 A Yes. I believe that's on Page 3. If you move
20 back about ten pages from the front of the runs, you get
21 to pages that are numbered in the upper right-hand corner.

22 The first section of these runs is an input
23 section and then once they start numbering them in the upper
24 right-hand corner, they are giving you the output of the
25 model. And I believe we are talking about Page 3.

#6-16-SucT

And on Page 3, the --

2 MR. ROLFE: Before you get there, let's make
3 sure the Judges are with us.

4 I believe for the Board's convenience, it's a
5 page which does have 3 at the upper right-hand corner, the
6 top substantive line begins with Income Statement (Millions
7 of Dollars).

8 BY MR. ROLFE: (Continuing)

9 Q Is that correct, Mr. Dirmeier?

10 A Income Statement, millions of dollars. Yes.
11 And I was just going to continue, if you go to Page 3 the
12 first four lines are operating revenue and the next approxi-
13 mately ten lines are operating expenses.

14 And if you go down to operations other in the
15 second category, operation expenses, under the column 1985
16 in these new runs the numbers for the July '85 in-service
17 is 273.2, which is what is in our table at Page 17. And
18 the number for the October in-service is 257.1, which is
19 also on Page 17.

20 What this shows is that subsequent to the
21 depositions where we asked why are the cash investment
22 changes different from the expense changes, you have changed
23 as an input the Shoreham retrofit, but you haven't changed,
24 as an example, the expense items.

end # 6 25
Joe flws

1 Q So, the numbers that would be in your table
2 would be the same for O&M expenses as are shown on Mr.
3 Nozzolillo's runs, is that right?

4 A (Witness Dirmeier) Yes.

5 Q Now, Mr. Dirmeier, can you find the portion on
6 both of these runs that applies to Shoreham property tax?

7 A Yes. I believe that is at page 37.

8 It is the bottom line of page 37. And the bottom line shows
9 for 1985 thirty million dollars of property tax assuming
10 it is in service July 1985, and fifteen million dollars
11 of property tax, assuming it is in service October 1985.

12 So that would indicate that my table at page 17
13 would be the same for those two lines.

14 Q So, at least with respect to the other assumptions
15 or output that you used in your table, Mr. Nozzolillo's runs
16 are consistant, and haven't made any changes, than those
17 that you relied upon in arriving at your conclusion, is that
18 right, with respect to the O&M expense and the property tax?

19 A Yes, those lines would stay the same.

20 Q And at least in Mr. Nozzolillo's runs upon which
21 he based his testimony, upon which you purport to comment in
22 your testimony, it would be appropriate to add the eleven
23 point four million dollar difference in capital retrofits
24 to the other two differentials that you have included in the
25 bottom half of your table, is that correct?

1 MR. SEDKY: Your Honor, again I hate to object,
2 but I think we have gone through this very same question at
3 least four times now, and Mr. Dirmeier has said no, you
4 can't do that. That in order to do that, you would have
5 to take that retrofit number, whatever it is, and remodel
6 the first run to see how it comes out. I think he said
7 that many, many times.

8 JUDGE MILLER: He said that several times.
9 I am not sure. Let's find out if this is going to be the
10 final answer, and then we will consider it as having been
11 covered.

12 MR. ROLFE: Judge Miller, I don't think he has
13 said that with respect to this question.

14 JUDGE MILLER: I don't know. Ask him.

15 MR. ROLFE: Did you understand the question,
16 Mr. Dirmeier?

17 WITNESS DIRMEIER: I am sorry. Would you please
18 repeat it.

19 MR. ROLFE: Certainly.

20 BY MR. ROLFE: (Continuing)

21 Q In Mr. Nozzolillo's runs, which you have before
22 you, and upon which he based his testimony, to make the
23 second half of your model, or your table complete, one would
24 have to add the eleven point four million dollar differential
25 in capital retrofits to the change column, and to the total

7-3-Wal

1 of 31.1 million dollars in the change column in order to
2 be appropriately comparing the change in Shoreham cash
3 investment to the bottom part of the table.

4 A (Witness Dirmeier) Yes. You would want to
5 compare it to 42.5. However, I would want to point out that
6 if you were using your updated models, I am not sure, and
7 in fact I am pretty sure that it would be incorrect to compare
8 it to 59, and the basis for that is while the numbers for
9 Shoreham appeared to have changed, you now have in your new
10 runs a larger difference, I believe it is, than you have
11 reflected there on a total company basis.

12 Q Let's look at that, Mr. Dirmeier. Let's find the
13 portion of the two computer runs which show the Shoreham cash
14 investment that you used in your table, and see if they are
15 the same.

16 JUDGE MILLER: Counsel, let me inquire. We are
17 spending an awful lot of time on the difference between two
18 printouts, and it appears to be because there were some
19 changes in the figures used by your Company's witness from
20 the time his deposition was taken, and the date his prefiled
21 direct testimony was prepared, is that it?

22 MR. ROLFE: Yes, Your Honor. And I can explain
23 the importance of it.

24 JUDGE MILLER: I know the importance, but what
25 I want to know is the why?

1 MR. ROLFE: Why it was changed, or why we are
2 spending so much time?

3 JUDGE MILLER: My inquiry is the cause of the
4 expenditure of this trial fact. Why didn't you change either
5 sooner, or give these witnesses an opportunity to go over
6 it so we don't spend the time here comparing two different
7 runs.

8 The original data was given in a deposition,
9 right?

10 MR. ROLFE: Yes, sir.

11 JUDGE MILLER: You changed that.

12 MR. ROLFE: Yes, sir, and these witnesses were
13 provided this back in mid-July, as soon as --

14 JUDGE MILLER: Before the prefiled testimony
15 was filed. Not just a day in July, but a very specific
16 day in July, when everybody was pretty busy.

17 MR. ROLFE: Yes, sir, and we --

18 JUDGE MILLER: Do you have any more such events?

19 MR. ROLFE: No, sir, but Judge Miller, let me
20 just clarify that these witnesses were asked in their direct
21 testimony yesterday, by their counsel, whether they had
22 reviewed these runs which are now before them, and whether
23 their review of those runs caused any change in their
24 testimony, and they said there was no effect of these runs
25 in their testimony which leads to the conclusion that the

7-5-Wal

1 challenges they make in their testimony in pointing out
2 purported errors in Mr. Nozzolillo's analysis would apply
3 equally to the runs upon which he actually based his testimony.

4 Now, I think it is important to establish that
5 they were either incorrect there, or that their testimony
6 doesn't really reflect an error in Mr. Nozzolillo's testimony.

7 This Board needs to make findings and decide which
8 of these two numbers is correct, and I think it is important
9 for the Board to understand if I am right that there is some
10 effect.

11 MR. SEDKY: May I respond to that, Your Honor.
12 Your Honor, first of all, Mr. Nozzolillo was on the stand
13 as their witness. They have known all along what Suffolk
14 County's position was with respect to this mismatch from the
15 prefiled testimony. He had an opportunity to address that
16 issue in his direct testimony, and chose not to.

17 Consciously chose not to, we presume. And he,
18 I believe testified that yes, the computer runs had been
19 changed, but not in any material respect.

20 MR. ROLFE: Judge Miller, may I respond?

21 JUDGE MILLER: Yes.

22 MR. ROLFE: There are three things that need to
23 be said here. First of all, in terms of the lateness, or the
24 alleged lateness when this testimony -- when these computer
25 runs were run, I might remind the Board that virtually every

1 single Suffolk County witness that was deposed had no opinion
2 at the time he was deposed, and we did not receive, for
3 the first time, any of their opinions until July 14, by
4 letters that came in on Thursday, Friday, and Saturday
5 before testimony had to be filed on Monday. So, I think
6 that needs to be said to be put into perspective.

7 Secondly, Your Honor, Mr. Nozzolillo did not
8 purport to address in his direct testimony earlier computer
9 runs which he felt, for whatever reason, were unreliable.
10 He merely based his testimony on these computer runs, which
11 were provided to the County at the time they were done, as
12 quickly as they could be done, and which the County has
13 testified they reviewed.

14 Now, it is obvious that they didn't review them
15 very carefully, because there were some changes, but neverthe-
16 less they testified voluntarily yesterday that they had
17 reviewed it, and it didn't affect their testimony.

18 Thirdly, keep in mind that the entire import of
19 this part of their testimony is not that they have performed
20 an independent analysis, and not that they can independently
21 come in here and say that there is a detriment, but that they
22 have looked at Mr. Nozzolillo's testimony, and that based on
23 what Mr. Nozzolillo has said to this Board, they think he
24 made a mistake, in essence.

25 So, if that is the whole import of their testimony,

1 I think it is imperative that we be allowed to probe on what
2 basis they say there is a mistake.

3 Now, it seems that they are saying that he made
4 a mistake in something that he is not even relying on for
5 his testimony.

6 JUDGE MILLER: Well, doesn't that put you ahead?

7 MR. ROLFE: Well, I think it does, and that is
8 what I am trying to establish so the Board would understand
9 ...

10 JUDGE MILLER: We understand.

11 MR. ROLFE: ... where those mistakes lie.

12 JUDGE MILLER: We understand. We know where the
13 record is. We know what the issues are, and if you put on
14 testimony which is not addressed, then there is a strong
15 possibility that it is not impeached. I would think you
16 would like that.

17 MR. ROLFE: I do like that very much, Your Honor.

18 JUDGE MILLER: Why are you trying to make them
19 do the work now in order to establish a basis for impeachment?
20 I don't understand your efforts, but we are giving you some
21 latitude, but I pointed out here now, you put on your
22 testimony. They either meet it or they don't meet it. That
23 goes to the sufficiency, probative value of the evidence
24 when compared with yours.

25 MR. ROLFE: Let me just make one other point

1 that some of these changes were made when during the deposition
2 Mr. Dirmeier pointed out certain possible problems in the
3 computer runs to Mr. Nozzolillo, and he went back and
4 changed them.

5 JUDGE MILLER: Whatever the reason. I am not
6 trying to get into the theory and practice of computerology.
7 Or computerees. I do know a, and b, and c, and I know the
8 state of the record. Now, I think we are going to have
9 to get to the end of this pretty shortly, and I am suggesting
10 to you let's see what the record is and what your own
11 evidentiary issues are. Both ways.

12 There is nothing speculative about that. It
13 is here and now. Okay, go ahead.

14 MR. ROLFE: I apologize if I belabored the
15 point.

16 BY MR. ROLFE: (Continuing)

17 Q All right. Now, Mr. Dirmeier, another possible
18 reason for the change or the disparity in the change
19 between the Shoreham cash investment and the post-commercial
20 operation expenditures that you show in the second half
21 of your table, would be that there were some expenses
22 which, in fact, did decrease after commercial operation,
23 isn't that right, sir?

24 A (Witness Dirmeier) No, I think expenses go
25 up after commercial operation.

1 Q You don't know that for a fact do you, Mr.
2 Dirmeier?

3 A Well, your tables show that. That if you started
4 earlier, you would have higher expenses than if you started
5 later. Expenses, you mean costs.

6 Q I am talking about expenses on a monthly basis,
7 sir. Expenditures on a monthly basis.

8 A And you are saying what? That expenditures
9 would go down?

10 Q I am saying that if we look at this three month
11 differential that you are looking at, and you are saying that
12 there is a problem because the differential in the Shoreham
13 cash investment attributable to that three month period does
14 not equal the difference in the post-commercial operation
15 expenditures, isn't it possible that that difference is
16 accounted for by the fact that there is, in fact, a difference
17 in expenses which the plant would incur before commercial
18 operation and after commercial operation?

19 MR. SEDKY: I object to the question as calling
20 for pure speculation, Your Honor. There is a difference between
21 a hypothetical question that is based on evidence on the
22 record, or evidence proffered even sometimes, but to just
23 simply say isn't it possible that the number isn't there
24 because the number isn't there, which is all he is really
25 asking, calls for sheer speculation on the part of these

1 witnesses.

2 JUDGE MILLER: I think the witness can tell us
3 the underlying basis, and if speculative we will either
4 strike it or disregard it. If there is difference in views,
5 we will let them briefly explore that.

6 Do you understand the question, sir?

7 WITNESS DIRMEIER: Yes. As I understand the
8 question, he is saying before it goes into commercial operations,
9 we may be expending at a certain level, and then after
10 commercial operations we will expend at a different level.

11 And maybe just to continue with the clarification,
12 we received -- we did express interest in that very subject.
13 I think there was an exchange of letters where we asked to
14 speak to Mr. Nozzolillo, and a letter came back saying: Well,
15 we don't want you to talk to Mr. Nozzolillo, but here is
16 a one, two, or three page explanation of the difference,
17 and the explanation was a schedule that said before commercial
18 operation, here is what we are spending, and after commercial
19 operation, here is what we are expending, with a list of
20 numbers. But not an explanation.

21 And the numbers are significantly different
22 before and after, without any explanation of why. And I think
23 our position is that there is a given amount of work to be
24 done, and once the work is completed, why would the people
25 still be there? Why would you still expend approximately

7-11-Wal

1 a million and a half to two million dollars a month I think
2 is what the number is, for LILCO labor -- this is not
3 consultants, this is LILCO labor, at Shoreham -- between
4 pre-commercial operation and post-commercial operation.
5 A million and a half to two million dollars of local labor
6 is a lot of people, and there is no explanation in any of
7 those documents that I have seen that explains to me what
8 those people are doing out there.

9 MR. ROLFE: Judge Miller, while Mr. Earley is
10 handing out this additional document, might I ask that the
11 two computer runs which were previously discussed by these
12 witnesses be marked as LILCO Exhibits LP-11 and 12; we will
13 make the July 1 in service date run LILCO Exhibit LP-11,
14 and the October 1, 1985 run LILCO LP-12.

15 JUDGE MILLER: They may be so marked for
16 identification.

XXXX INDEX 17

(The above referenced documents
18 are marked LILCO Exhibit LP-11,
19 and LILCO Exhibit LP-12, for
20 identification.)

21 MR. ZAHNLEUTER: Excuse me, Mr. Earley. May I
22 have a copy, please?

23 MR. ROLFE: And also I would request that the
24 document that was just distributed, which is -- consists of
25

7-12-Wal

1 a memorandum dated July 12, 1984, from L. A. Peyser, to A.
2 Dinkel, which is accompanied by five pages of tables, be
3 marked as LILCO Exhibit LP-13.

4 JUDGE MILLER: It may be so marked for identifi-
5 cation.

XXX INDEX

6 (Above referred to document is
7 marked LILCO Exhibit LP-13, for
8 identification.)

9 BY MR. ROLFE: (Continuing)

10 Q Mr. Dirmeier, is that the memorandum to which
11 you just referred that you received from LILCO?

12 A (Witness Dirmeier) Yes, it is.

13 MR. SEDKY: Before he goes on here, to the
14 best of my recollection, that letter was furnished after
15 all the testimony was filed in this proceeding.

16 Now, if he wants to reopen the record and give
17 us an opportunity to revise our testimony based on that
18 letter, we will do that. Otherwise I think there should be
19 no examination as to material that was furnished subsequent
20 to the filing of testimony here.

21 JUDGE MILLER: Do I understand that this is the
22 data, however, requested by your witnesses when they observed
23 certain changes, a couple of days, perhaps, prior to the
24 prefiled testimony, was responsive to that --

25 MR. SEDKY: No, Your Honor. I believe that that

1 information was requested after we saw their prefiled
2 testimony, and --

3 JUDGE MILLER: Let me ask the witness. What
4 did you say about that, sir?

5 WITNESS DIRMEIER: Well, after we had filed
6 our testimony, just to give the time frames, I believe --
7 and can't give you the dates -- it was in July.

8 There was a Thursday upon which we received
9 the Company's new runs. And our testimony was due Monday,
10 the following Monday. So we did not incorporate the new
11 runs into our testimony.

12 Subsequent to filing, we did review the runs
13 and determined that while they do change some of the numbers,
14 they don't change our conclusion.

15 I believe the change in our numbers was approxi-
16 mately ten million dollars, which would still mean a very
17 negative detriment from the early operation of Shoreham. We
18 then had an exchange -- as I recall, there was an exchange
19 of letters between my counsel and LILCO's counsel, where my
20 counsel was saying our fellows still have a concern about
21 the disparity between the cash investment and the O&M and
22 expense change, and we would like to speak to Mr. Nozzolillo.

23 And as I recall, the response that came back was
24 a letter that said: Well, we can't talk to Mr. Nozzolillo,
25 but we will give you this document, this letter, in which

7-14-Wal

1 someone has reviewed the documentation, and this is the
2 letter.

3 JUDGE MILLER: This is the letter?

4 WITNESS DIRMEIER: This. And where we are now,
5 Your Honor, is that we have had no opportunity to do discovery
6 regarding this letter, no opportunity to do cross examination,
7 or to get into the underlying details of these differences
8 to say there is validity to these differences or there is
9 not validity to these differences.

10 At this point in time, we just have to take them
11 on face value.

12 End 7.
13 Mary fols.

14

15

16

17

18

19

20

21

22

23

24

25

Sim 8-1

1 MR. ROLFE: Judge Miller, may I respond?

2 JUDGE MILLER: Yes.

3 MR. ROLFE: First of all, it was not I who
4 brought up this memorandum. This was the memorandum to
5 which Mr. Dirmeier just referred in his previous answer, and
6 therefore I thought it might be helpful to have it in the
7 record for the Board to see to what Mr. Dirmeier was
8 referring.

9 Secondly, his point, and I don't mean to be
10 responding or arguing with a witness, but his point that he
11 has had no opportunity to review it or what-not, I think
12 must be viewed in the context that all of Messrs. Madan's
13 and Dirmeier's testimony has been premised upon the
14 acceptance of LILCO's input data because Mr. Dirmeier
15 testified that he had no independent knowledge of those
16 facts.

17 In other words, again keep in mind what we have
18 got here is a piece of testimony which doesn't say we
19 have examined the books and whatever and arrived at our
20 own conclusion. What we have done is we have looked at
21 all of LILCO's numbers and they made a mistake.

22 The implication is because there is this gap,
23 that rather than being explainable by an actual change
24 in expenses, it must be a mistake.

25 I don't intend to ask the witnesses to verify

Sim 8-2

1 or to accept these numbers in this memorandum as true.
2 However, I do intend for the completeness of the record
3 that since all the rest of their analysis is based upon
4 LILCO's numbers, and since they are claiming that LILCO's
5 analysis, based on LILCO's own numbers, is incorrect, I
6 think the fact that LILCO's numbers show that there is in
7 fact a decrease in expenses after commercial operation shows
8 that, according to LILCO's numbers, there is no mistake.
9 There is an actual decrease in expenditures.

10 JUDGE MILLER: That is all LILCO has to prove
11 in its case affirmatively.

12 MR. SEDKY: Well, that is my point, Your Honor.

13 JUDGE MILLER: And they can also oppose it and
14 challenge it on the basis of whatever evidence they present.

15 MR. SEDKY: Your Honor, our prefiled testimony
16 on this discrepancy was filed well in advance of this
17 hearing. I assume Mr. Nozzolillo read it, and I am certain
18 Mr. Rolfe read it.

19 Of whatever validity this document is, it
20 certainly shouldn't come in during cross-examination of
21 our witnesses. If they wanted to make the point, they
22 should have made the point in their direct examination.

23 This letter ---

24 JUDGE MILLER: This was in response to the
25 witness' testimony.

Sim 8-3

1 MR. SEDKY: Well, Your Honor, any witness
2 might make a tangential comment on anything and that doesn't
3 open the door to -- there is something called impeachment
4 on collateral matters, I think is the doctrine, and you
5 can't sort of ---

6 JUDGE MILLER: Or impeachment on immaterial
7 matters.

8 MR. SEDKY: That is correct, Your Honor.

9 JUDGE MILLER: That is a little different.

10 MR. SEDKY: I don't disagree with that. The
11 whole point is, Your Honor, this is an issue that they after
12 the filing of the testimony in this matter began to interject
13 new assumptions and new facts, and I am not talking about
14 the computer runs, but I am talking about this letter and
15 the correspondence that accompanied this letter.

16 We asked for information as a matter of good
17 conscience in trying to find out is there a basis for this
18 apparent discrepancy, and rather than have our experts
19 be able to talk to Mr. Nozzolillo about this thing, they
20 sent some document that now they are going to seek to
21 introduce into the record here from which they can make
22 some argument which is really a surprise document insofar
23 as we are concerned.

24 Insofar as the testimony is concerned, I just
25 don't think it is proper to bring in evidence that we have

Sim 8-4

1 had no discovery over and no ability to cross-examine on
2 and just sort of spring it on us in cross-examination
3 of our witnesses, especially since this is an issue that
4 is part of the direct case.

5 JUDGE MILLER: I think that this arises from
6 the witnesses efforts to show us the information that they
7 had, when they received it and the fact that they had
8 requested some follow-up and this is what they got. I
9 think it follows very logically from the whole course of
10 the testimony as a result of the inquiry on cross-examination.
11 But I don't want to extend this thing unduly nor
12 interminably.

13 MR. SEDKY: Well, we would request an opportunity
14 to engage in discovery over that letter.

15 JUDGE MILLER: Well, that letter was produced
16 at your request. So you have had your discovery.

17 MR. SEDKY: It was produced on July 24th, 1984
18 after we had asked for some clarification. We still need
19 the clarification, and if this letter ---

20 JUDGE MILLER: That was a post-filing informal
21 discovery request and a partial compliance. It was still
22 informal and beyond our date. At that point nobody filed
23 any motions that we need more discovery.

24 MR. SEDKY: It is only being proffered at this
25 time, Your Honor. If this document is going to be used

Sim 8-5

1 at all in this proceeding, we state as a matter of fairness
2 and to protect any surprise in this proceeding, and I am
3 just making my record, and I can see where Your Honor's
4 is going to rule, but I have to protect my record that
5 we are entitled to discovery on this document and that we
6 would seek that this proceeding be suspended until we are
7 able to do that.

8 JUDGE MILLER: You know very well that a request
9 to suspend this proceeding is going to be viewed very
10 dimly by this Board at this time in the midst of it.

11 Now I will say that we want to be fair to all
12 parties and we don't necessarily criticize post-informal
13 discovery after the close of discovery. We had the date
14 on the discovery closing and the filing of the prefiled
15 testimony to give some finiteness to what could be going
16 on forever.

17 We do know, however, that some updating, and
18 this is an example, where the prefiled testimony did
19 result in some changes of data or whatever from that which
20 had been produced.

21 Now we had also requested and directed all
22 parties to up date discovery produced so that nobody would
23 be taken by surprise. We are not claiming anybody is
24 surprised or unsurprised and we don't want anybody to be
25 prejudiced. We are trying to get together these two things,

Sim 8-6

1 and the witnesses I think are being very helpful in giving
2 the bases of how they view it. Now what the result is,
3 we certainly are not prejudging one way or the other.

4 MR. SEDKY: I understand that, Your Honor.
5 You may have misunderstood my point, and I am really not
6 trying to be obstreperous here.

7 JUDGE MILLER: I didn't say you are.

8 MR. SEDKY: The only point is that we now have
9 a document that was furnished on or about July 24. That
10 document raises a lot of questions. I think in good faith
11 there are numbers there that are not explained, their bases
12 for those numbers are not explained and so forth.

13 Our only point is yes, we encourage informal
14 discovery and so forth. They denied us the opportunity
15 to talk to Mr. Nozzolillo informally so that we could get
16 some understanding of the the basis of the discrepancy.

17 JUDGE MILLER: Well, that is understandable
18 and you probably wouldn't have turned your experts over
19 to them for eyeball-to-eyeball informally I suppose. I
20 wouldn't.

21 MR. SEDKY: I don't know. That is not really
22 relevant.

23 JUDGE MILLER: But you were both trying in
24 good faith to concede that.

25 MR. SEDKY: That is correct, and the document

Sim 8-7

1 on its face I think, as Mr. Dirmeier has already indicated
2 in his testimony, raises questions, legitimate questions.

3 JUDGE MILLER: Well, I think over the weekend
4 Mr. Dirmeier is going to have an opportunity probably to
5 look at these and he probably can help us on Monday morning
6 at 9 o'clock ---

7 MR. SEDKY: This is not his document, Your
8 Honor, and we would like to talk to Mr. Nozzolillo over
9 the weekend.

10 JUDGE MILLER: Well, now wait a minute. You
11 might, but you filed prefiled testimony which includes
12 analyses, computer printouts and so forth presenting your
13 side of the case or in opposition probably or in refutation
14 perhaps of the analysis made by LILCO witnesses.

15 Now if those two don't match up, we are going
16 to have to go with the record as we have it. Now we are
17 trying to make it a meaningful analysis both ways, but on
18 the face of it he has testified to "A" and they say not
19 quite "A" but "A-" or whatever. If we don't get to the
20 expiration of it, your impeachment isn't going to meet
21 squarely.

22 I would think that in fairness to everybody
23 and a complete record, it would be better to let these
24 witnesses have a look so that we could get a meeting, but
25 I am not going to tell you how to try your lawsuit.

Sim 8-8

1 Neither am I going to interrupt for discovery, however.

2 Now let's leave it at that point and let us
3 see if this matter has any continuing significance or not.
4 It may not, so we won't anticipate that.

5 What is your next question? Do you want to
6 review the bidding?

7 MR. ROLFE: I am ready, Your Honor.

8 BY MR. ROLFE:

9 Q Gentlemen, in arriving at your opinion that
10 there was a mismatch between the post-commercial operation
11 expenditures and the pre-commercial operation case investment,
12 am I correct that you concluded that that difference was
13 necessarily attributable to a mistake or an error?

14 A (Witness Madan) In making our conclusion we
15 came to the conclusion that there was both a conceptual
16 mistake and perhaps an actual mistake.

17 We recognized, as we have from the deposition
18 of Mr. Nozzolillo and his cross-examination, that he simply
19 provided numbers by other experts of the company. In
20 making this conclusion, there has to be an assumption on
21 the part of LILCO that the delay in the in-service state
22 results in certain continuing expenditures that would not
23 otherwise result from an early in-service date.

24 Based on our experience, we believe this
25 conclusion to be factually incorrect, has no support,

Sim 8-9

1 it was something we requested discovery upon, it was not
2 provided to us, and it is this information we believe is
3 incorrect.

4 We have looked at other plants in numerous
5 rate cases as they go into service, we have provided
6 revenue requirements based on that and, for example, the
7 conclusion that you continue expending \$3 million a month
8 on consultants, because you have a three-month delay,
9 in our opinion is totally conceptually incorrect.

10 If there is a certain finite amount of work
11 to be done by the time this plant has got to be in service,
12 that is the amount of work that has to be done.

13 An assumption that continues these expenditures
14 arbitrarily and is fed into a model to correct a discrepancy
15 that we point out we believe is a selective change of an
16 assumption, has no validity and is not based on any of our
17 experience that we have seen before.

18 MR. ROLFE: Your Honor, I move to strike the
19 entire answer after the response. I only asked for a yes
20 or no to my response, and if the witness' answer is
21 allowed to stand, I would like to respond as to what
22 actually transpired in discovery.

23 The witness has mischaracterized what went
24 on in discovery.

25 JUDGE MILLER: But, you see, he is the witness

Sim 8-10

1 and you are a lawyer, and you get to ask questions but
2 not give answers and vice versa.

3 MR. ROLFE: Yes, sir, but he was not asked
4 about the state of the discovery record here.

5 JUDGE MILLER: Well, he gave information which
6 he believed to be explanatory of the situation, and it
7 seemed to be reasonably within that ambit. So we will
8 let it stand.

9 Now if you want to put on evidence or otherwise
10 handle these matters, you may do so, but not by way of
11 testifying.

12 MR. ROLFE: I did not want to testify, Your
13 Honor.

14 JUDGE MILLER: Okay. Well, I wouldn't either.

15 MR. ROLFE: Far from it.

16 (Laughter.)

17 JUDGE MILLER: Let's get down really to the
18 differences. There are conceptual and other differences,
19 and those are the matters that this Board is going to
20 have to wrestle with. While we can understand the impact
21 of discovery and changes perhaps and figures and deadlines,
22 that doesn't really help us. We are not trying to cast
23 blame or anybody.

24 They are here now and are expressing certain
25 professional views as they see it. Now I think that you

Sim 8-11

1 are certainly entitled to explore and find out why and
2 then to meet them in whatever way you feel is best suited
3 to your case.

4 I think there is where perhaps our efforts would
5 be more productive than trying to get to who struck John
6 on discovery and that kind of thing.

7 In fairness now we are going to give you all
8 a chance. We are not going to suspend for depositions, but
9 short of that there are ways of getting information and
10 rebuttal testimony and the like.

11 We will approach anything that seems to be fair
12 and reasonable and does not disrupt the proceedings.

13 Go ahead.

14 BY MR. ROLFE:

15 Q Mr. Madan, do you agree that if in fact there
16 was a change in expenses, an actual drop in expenses after
17 commercial operation, that that could account for the
18 difference that you characterize as a mismatch?

19 A (Witness Madan) No, there is no drop in
20 expenses. There is an increase in expenses.

21 Q Mr. Madan, I don't think you understood my
22 question and let me rephrase it. Well, a new question.

23 Do you agree that if in fact there were a
24 decrease in expenditures after commercial operation that
25 that could account for the difference which you characterize

Sim 8-12

1 as a mismatch?

2 A I am not sure I understand the question still.
3 There is a difference of \$28 million of expenditures.

4 Q If you don't understand it, I will be glad
5 to rephrase it.

6 You said that ---

7 JUDGE MILLER: I wish somebody would explain
8 this term "mismatch." Does that appear in the testimony
9 somewhere?

10 MR. ROLFE: Yes, Your Honor, it does.

11 JUDGE MILLER: About what page? I will try
12 to find it because I would like to understand and be sure
13 we are on the same wavelength when we are talking about
14 mismatches. 16 I am told perhaps.

15 (Pause.)

16 WITNESS MADAN: It is on page 17, Your Honor.

17 JUDGE MILLER: Thank you. What line is that?

18 WITNESS MADAN: Well, it is really ---

19 JUDGE MILLER: It is a concept, I understand
20 that.

21 WITNESS MADAN: Right. It is the last question
22 and answer, which is imbalance. You could read the
23 mismatch, how does this imbalance or mismatch lead to a
24 change in the relative net present value.

25 MR. SEDKY: The word actually is used on page

Sim 8-13

1 15, Your Honor.

2 JUDGE MILLER: Okay. Fine. I think I under-
3 stand what you mean now.

4 Proceed.

5 BY MR. ROLFE:

6 Q Now, Mr. Madan, I am not asking you to opine
7 as to whether in fact there is a decrease in expenditures.
8 I am asking you that if you assume that in fact after
9 commercial operation the level of expenditures decreased,
10 from the level of expenditures before commercial operation,
11 that that could account for what you characterize as a
12 mismatch of \$28 million?

13 A (Witness Madan) Expenditures at what level?
14 Expenditures in what?

15 Q Total expenditures.

16 A No.

17 JUDGE MILLER: What would they have to be?

18 WITNESS MADAN: The entire exercise, Your Honor,
19 is, if I could just take a minute and explain the mismatch,
20 and that will explain what it will have to be, is there
21 is a difference if the company says in cash expenditures
22 from a three-month delay.

23 If the plant was delayed three months, they would
24 spend \$59 million more in cash. Now to analyze that, as
25 a starting point we said, okay, if you look at the converse,

Sim 8-14

1 and if in fact the plant went into service three months
2 earlier, you would have in effect right before the plant
3 goes into service the forces in place, et cetera, and so
4 therefore you will have a change in operations expense
5 from those that were previously being capitalized to now
6 being expensed. That accounts for some \$16 million.

7 You have another change, purely a bookkeeping
8 change, both of these changes, in the property taxes. The
9 three-month delay results in a change, if you would, in
10 \$15 million from being booked earlier to being expensed
11 and the difference in there.

12 Now you still have \$28 million to go. Their
13 position is that because the plant is delayed three months,
14 you somehow have this arbitrary \$28 million of additional
15 expenditures that we are trying to get the basis of and
16 probe as to what this entails.

17 For example, it entails \$3.3 million a month
18 because it goes into service some three months later for
19 consultants.

20 Now our position is that whatever the requirement
21 is for consultants, that has to be met by the time the plant
22 goes into service. Whether it goes into service three months
23 early or goes into service three months later, you are going
24 to need the same amount of consultanting.

25 Why you would keep \$10 million worth of

Sim 8-15

1 consulting as a contingency because you have this three-
2 month delay, to us has not been explained. That is the
3 basis of which we were probing.

4 They have another \$1.7 million a month for
5 personnel in addition to the amount they are expensing
6 on the delay. This is an inordinate amount of people. It
7 may be 700 people and no explanation as to who these people
8 are, what they are doing for the three months and why these
9 fairly large incremental expenditures for a scenario in
10 which the plant is three-months delayed.

11 The rest of it is understandable. It is a book-
12 keeping change because the forces are in place. A piece
13 of it gets capitalized. When a plant is up to almost
14 full power in its testing, our experience has been that
15 there is simply a shift from the amount that has been
16 capitalized to the amount that goes into service. That is
17 what we routinely have placed in the rates in any number
18 of rate cases.

19 All of the sudden you see a \$28 million change.
20 You pointed out, and in the update there is some change
21 in the in-service cost. Our experience has been if you
22 change the initial period of the post-completion, you
23 should reasonably see some trickle effect of that into
24 other years, but this was just a plug. It plugged the
25 first year in terms of these additional post-completion

Sim 8-16

1 costs and said well we fixed half the problem and now
2 we have got another half to go. So we will put some money
3 into consultants and we will put some money into these
4 people with no explanation, and that is what we are
5 trying to probe. That is the mismatch we are talking about.

6 MR. ROLFE: Judge Miller, I move to strike the
7 portion of Mr. Madden's answer which goes beyond the
8 numbers LILCO used and injects his own experience. Your
9 Honor refused to ---

10 JUDGE MILLER: We are trying to develop a
11 complete record here and let's not quarrel about tables
12 and mismatches and so forth. Let's get down to the
13 underlying hard-core realities.

14 He has expressed from their point of view
15 their criticism. They are questioned as experts in terms
16 of their testified qualifications as against your
17 company's experts and so forth. Now you can't twist
18 their arms and make them change on cross. That is not the
19 function of cross. You can explore the differences. Then
20 where it is significant to your case, you can come back
21 with rebuttal. But you are understanding now what it is
22 based on. The Board certainly is understanding a lot
23 better that position, and we will give you the opportunity
24 (a) you can examine and probe in a reasonable way in cross.
25 But if you are going to get right down to the realities

Sim 8-17

1 of the thing, you are probably going to have to put on
2 some affirmative evidence. You are better off to know
3 what it is than to have everybody dangling around saying
4 if I had known this and if only that had been said.

5 Now that is the basis of our ruling. You are
6 permitted to cross-examine, but let's not get down into
7 the nitty-gritty of certain things because that isn't what
8 is probative to the Board. We have to make a decision.

end Sim
Sue fols

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

#9-1-SuaT

MR. ROLFE: May I just state my objection for
the record? I understand Your Honor has ruled adversely.

JUDGE MILLER: You certainly may do that. We
would like to have the basis of your objection. We want
to understand everybody's position.

MR. ROLFE: My objection was simply that earlier
when I tried to probe into Mr. Madan's opinion and experience,
I was precluded from doing that because I was told that
Mr. Madan's opinion was based solely on LILCO's numbers and
that we weren't going beyond LILCO's numbers. And now Mr.
Madan, in attempting to explain things, is attempting to
go beyond LILCO's numbers. And I don't think --

JUDGE MILLER: I don't understand how you were
precluded from doing that. I thought you asked Mr. Madan
about anything that you wanted to in voir dire. Is that
what you are referring to?

MR. ROLFE: No, sir. It was when I asked him
whether his -- remember, when we were discussing his isolation
of the year 1985 and whether in fact in his view there would
be that kind of rate treatment afforded, and I tried to ask
him whether a rate moderation plan might have some effect
on that and there was an objection.

JUDGE MILLER: Well, now the rate moderation plan
in the future is getting kind of iffy, and we don't want
anybody getting iffy. And that's a whole different kettle

#9-2-SueT

1 of fish. We don't want to get into speculation. We regard
2 it as speculative, what's going to happen a week from now
3 with this Company, if you want to put it in such crude
4 terms.

5 But we don't think we are required to make that
6 decision for these findings. Those will be the problems of
7 the Commissioners of other boards.

8 Okay. Go ahead.

9 BY MR. ROLFE: (Continuing)

10 Q Mr. Madan, it's true, is it not, that part of
11 the pre-commercial operation expenditures will be attribu-
12 table to the cost of licensing proceedings?

13 A (Witness Madan) And be capitalized?

14 Q Yes, sir.

15 A Yes.

16 Q And almost by definition if Shoreham goes into
17 operation three months earlier, the licensing proceedings
18 would be three months shorter; is that true?

19 A The licensing proceedings would conclude when
20 the appropriate record is concluded. I believe it's not
21 going to go in any sooner or later. It's a fixed amount of
22 effort and a fixed amount of time and a fixed amount of
23 money.

24 Q Do you agree with me that at least a substantial
25 portion of the licensing proceedings would have to be

#9-3-SueT₁

1 concluded before Shoreham gets a commercial operation
2 license?

3 A It would be my understanding that whatever
4 licensing has to be done would have to be done in both
5 cases. And whether it's substantial, or all of the licensing
6 would have to be done, all of the requirements would have
7 to be met before Shoreham is placed in commercial operation.

8 Q Then, it's your opinion that regardless of
9 whether the licensing proceedings take three months longer
10 that the costs of preparing for, paying counsel, paying
11 consultants for those licensing proceedings will be the
12 same?

13 A No, that's not what I said. I'm saying that
14 the effort of licensing the plant is the same in both
15 scenarios. Whatever record has to be built, whatever effort
16 has to be taken to license the plant, that would be the
17 same under both scenarios.

18 Q Regardless of whether the licensing proceedings
19 continued until only July 1, 1985 or continued until
20 October 1, '85; is that right?

21 A When you say regardless, I'm not sure what you
22 mean. Yes, the same amount of time, effort would be
23 involved in terms of obtaining the final licensing proceed-
24 ing. The licensing is not going to change, or the in-service
25 date I hope, would not change based on any inadequate

#9-4-SueT 1

2 record that would be required by a three month acceleration
3 of an in-service date. Whatever has to be done, whatever
4 effort is needed, I'm sure that no shortcuts will be taken
5 to put this plant into service.

6 Q Now, Mr. Madan or Mr. Dirmeier, another basis
7 for your challenging the conclusions reached in Mr.
8 Nozzolillo's testimony is your view that LILCO should have
9 extended its analysis from the years 2000 through the years
10 2015; is that right?

11 A (Witness Dirmeier) Yes, that's correct.

12 Q And I believe you state in your testimony that
13 for the intervening years between 2000 and 2015 that LILCO
14 will see lower revenue requirements on a present worth
15 basis if Shoreham reaches commercial operation in July 1,
16 1985 as opposed to October 1, 1985; is that right?

17 A Yes, only on the Shoreham piece. But the -- and,
18 in fact, the extension, except for the last year, improves
19 the apparent benefit.

20 Q That's right.

21 A Or detriment. It makes it less detrimental or
22 more beneficial, depending on which side of the coin you are
23 on.

24 JUDGE JOHNSON: Beneficial or detrimental to
25 whom?

WITNESS DIRMEIER: Well, I think LILCO and ourselves

#9-5-SueT 1

2 and us, we are speaking of a detriment in benefit in the
3 same way. There is a benefit if the net present value
4 of revenue requirements is lower; there is a detriment if
5 the net present value is higher.

6 So, we agree -- I believe we agree on the
7 definition of what accomplishes a detriment or a benefit.

8 JUDGE JOHNSON: This is detriment or benefit to
9 the ratepayer?

10 WITNESS DIRMEIER: Yes.

11 JUDGE JOHNSON: Thank you.

12 BY MR. ROLFE: (Continuing)

13 Q And, in fact, at Page 19 of your testimony you
14 state, referring to the year 2000 until the life of the
15 plant which you -- until the end of the life of the plant,
16 which you postulate is 2015, that the intervening years
17 will have slightly lower revenue requirements if Shoreham
18 is allowed to operate early because the unit will be at
19 lower book cost and therefor have lower depreciation and
20 return requirements; is that right, sir?

21 A Yes. The Shoreham revenue requirements in those
22 intervening years will be lower.

23 Q And as a result the rates would be lower?

24 A Yes.

25 Q And I believe you conclude at Page 20 of your
testimony that considering those additional years would

#9-6-SueT 1

2 result, and again segregate for a minute your opinion con-
3 cerning the fuel offset at the end, but just considering the
4 lower revenue requirements of those additional years would
5 be worth 14 million dollars in present worth benefits to
6 the ratepayer; is that accurate?

7 A Yes.

8 Q Now, you go on to opine that this extra 14
9 million dollars would be offset by increased fuel costs at
10 the end of the useful life of Shoreham; is that right?

11 A (Witness Madan) Yes, we do.

12 Q Before I get to that, let me clarify one thing.
13 You say that even without this fuel offset there would still
14 be a 4 million dollar detriment from Shoreham's going on
15 line earlier.

16 Am I correct that that detriment would be
17 attributable to the factoring in of the 14 million dollar
18 benefit and the 28 million dollar mismatch which we have
19 already discussed?

20 A That's correct. At that point, we will be at a
21 net 4 million dollar detriment before considering any of
22 the fuel benefits from the last year.

23 Q And if, in fact, there were no 28 million dollar
24 mismatch, then one could simply add the 14 million dollar
25 benefit that you found for the years 2000 to 2015, again
without considering the fuel offset, to the benefit which

#9-7-SueT

LILCO postulates of somewhere between 8 and 45 million dollars; would that be accurate?

A I'm not sure what the question is. If 8 plus 14 is 22, the answer is yes.

Q All right. Then, you say that we have to reduce that 14 million dollar benefits in that period for the years 2000 to 2015 by an offset for increased fuel costs.

A That's correct.

Q And you will agree, will you not, Mr. Madan, that the assumption that there will be such an offset -- excuse me, that your testimony that there would be such an offset assumes several things, or makes several assumptions?

A It makes one major assumption. The major assumption we make is that the output from Shoreham will remain constant in both scenarios. In other words, it's a machine and it will produce the same amount of energy whether you put it into service three months earlier or three months later.

Q Well, in fact, don't you also have to assume -- and maybe this is the same thing and I didn't quite understand you, but don't you have to assume that the plant will have a thirty year useful life to the day and no more?

A No. It really assumes that the energy is the same whether it's thirty years or twenty-nine years and three hundred and sixty-four days. I'm not sure. The

#9-8-SueT1

1 answer to your question is that makes a difference. As
2 long as the energy is constant in both the scenarios,
3 three months earlier versus three months later, you will
4 get the same answer.

5 Q Assuming that the -- strike that. You also
6 assume, do you not, Mr. Madan, that when Shoreham is taken
7 out of commercial operation it will be displaced by an
8 oil-fired plant?

9 A Well, our testimony really addresses a number of
10 scenarios. We basically say that it will be replaced by
11 a more expensive source of generation.

12 Basically, a study going out that far, even when
13 we give you the benefit of the 14 million dollars from the
14 years 2000 to 2014, makes the same assumption that all
15 other things in the system-- all we did was extended the
16 model out by using different indices to expand different
17 expenses and revenues as you went out the future years.

18 In other words, in providing you that benefit
19 of the 14 million dollars we had to make an assumption,
20 which is a reasonable assumption for these study purposes,
21 that all those things would stay the same. Now, if those
22 things stay the same to produce the 14 million dollar benefit,
23 then the next day or the next three months in which Shoreham
24 then stops operating and then you have got to replace it
25 by something, a reasonable approach in going out that far is

#9-9-SueT 1

2 to assume then, therefore, for those three months you will
3 have a continuation for what caused the benefit in the
4 prior 14 years.

5 So, yes, we assume that the future value of that
6 would be anywhere up to 50 million dollars which is the
7 value today in the first three months. It will keep
8 escalating at some inflation rate and, in fact, when you
9 bring it back into current dollars it will be roughly the
10 same. In other words, when you get the benefit today at
11 some point you've got to make up that three months of
12 energy.

13 Q And in arriving at that conclusion, you assumed
14 and used in your model the numbers which were used for oil
15 displacement of Shoreham in the first three months of its
16 commercial operation; is that right?

17 A It's current oil displacement, that's correct.

18 Q And we know, for example, when Shoreham goes
19 into commercial operation it will displace oil, oil-fired
20 plants producing electricity; is that right?

21 A Generally it will displace oil. It will dis-
22 place some interchange and it will displace mainly oil.
23 It -- we know that that's the effect in the near term
24 with a substantial rate increase.

25 Q Now, we don't know what Shoreham will be replaced
by when it goes out of service, do we, sir?

#9-10-SueT

1 A Well, we have a study over such a long period
2 of time that even the assumptions in the year from 2000 to
3 2014, which is a period of time over which we gave you the
4 14 million dollar benefit, are not as clear either, but
5 in terms of getting a study resolved that calculates a
6 thirty year impact you keep the same assumptions all the
7 way through and don't cut it off three months before the
8 end of the period.

9 Q Well, to arrive at the figures you arrived at
10 for a fuel offset, you assume that Shoreham will be replaced
11 at the end of its useful life by an oil-fired plant with
12 the same level of efficiency or inefficiency as Shoreham
13 will displace when it comes on line in 1985, do you not?

14 A We --

15 MR. SEDKY: Your Honor -- go ahead.

16 WITNESS MADAN: We are assuming that conceptually
17 that the oil displacement you have today will carry on and
18 that will be the outer edge of a reasonable assumption,
19 that in fact the difference today will be escalated at a
20 normal escalation rate and when you discount it back in
21 today's dollars whether you displace it precisely by oil
22 or whether at that point it's another fossil fuel that
23 has a relative price differential to nuclear in the same
24 amount, that's the assumption that was made.

25

#9-11-SueT1

BY MR. ROLFE: (Continuing)

2 Q Well, it would have to, as you say, be a fuel
3 which has the comparable differential in price between
4 it and nuclear fuel as between the oil used in plants of
5 the same efficiency level which Shoreham will displace in
6 1985 as -- strike that. Let me try that again.

7 JUDGE MILLER: Why don't you think about it
8 and we will take a break for lunch?

9 MR. ROLFE: Thank you, Your Honor.

10 JUDGE MILLER: 1:30.

11 (Whereupon, the hearing is recessed at 11:44 a.m.,
12 to reconvene at 1:30 p.m., this same date.)

13 end #9
14 Joe flws

14

15

16

17

18

19

20

21

22

23

24

25

AFTERNOON SESSION

(1:30 p.m.)

1 JUDGE MILLER: You need.

2 BY MR. ROLFE: (Continuing)

3 Q Gentlemen, isn't it true that it is currently
4 against the law for a utility to build an oil-fired generating
5 plant?
6
7

8 MR. SEDKY: I object to the question, Your
9 Honor. It obviously calls for a legal conclusion of these
10 lay witnesses.

11 JUDGE MILLER: I suppose you are not going very
12 far with it. You are not trying to speculate.

13 MR. ROLFE: That is correct, Your Honor.

14 JUDGE MILLER: Okay, you may answer.

15 WITNESS MADAN: It is my understanding that there
16 are regulations prohibiting the building of base load oil-fired
17 units.

18 BY MR. ROLFE: (Continuing)

19 Q Now, if the power generated by the Shoreham plant
20 were replaced by power generated by another nuclear plant when
21 Shoreham goes out of service, then there would be no fuel
22 offset as you postulate in your testimony, is that right, sir?

23 A (Witness Madan) I am sorry. Would you repeat the
24 question.

25 Q If, when Shoreham goes out of service as you

1 postulate in the year 2015 --

2 A Right.

3 Q -- the power generated by Shoreham is replaced
4 by another nuclear plant as opposed to an oil-fired plant,
5 there would be no fuel offset as you postulate in your
6 testimony, is that correct?

7 A Well, it would depend on the circumstances at
8 that time. You would have to look at the entire system to
9 make that determination.

10 Q Well, if power generated by nuclear fuel were
11 replaced by power generated by nuclear fuel, then there would
12 be no difference in the cost as you postulate to arrive at
13 your fuel offset by looking at power generated by nuclear
14 fuel being replaced by power generated from oil, isn't that
15 right?

16 A Actually, that is totally incorrect. What
17 would happen, is if your future plant was as uneconomic as
18 Shoreham now is, you would have a tremendous base increase
19 again being displaced.

20 You have to look at the total plant. You cannot
21 put a nuclear plant in in the year 2014, assume certain fuel
22 savings, and not assume you are going to have a tremendous
23 increase in base rates, which would have to come into the
24 analysis.

25 Right now, the analysis is 165 million dollars

1 up base rates, fifty million dollars down fuel.

2 Those are your numbers. Those numbers would be
3 carried through to the year 2014.

4 Q Yes, sir, Mr. Madan, I think you must have
5 misunderstood my question.

6 A No I didn't.

7 Q I thought we were talking -- well, if you didn't,
8 then you didn't answer it. I thought we were talking solely
9 about a fuel offset, and not about capital cost of the plant,
10 and I thought that your testimony said that LILCO's analysis
11 was incorrect because it assumed a fuel savings in the first
12 three months of operation, and if you assume that the length
13 of Shoreham's commercial operation would be the same regardless
14 of when it goes into service, that there would be a fuel
15 offset when it goes out of operation.

16 My question only went to the fuel; it did not
17 go to the overall construction cost of the plant.

18 A Well, I think we looked at total revenue require-
19 ments, and to the extent a later start date ends the analysis
20 three months later, to the extent you want to put in there a
21 nuclear plant, you would have to look at both the components
22 and the analysis right now is that the base rate impact of that
23 is three times greater than the fuel savings.

24 You can't look at one piece.

25 Q You didn't do that with respect to the displacement

1 by an oil-fired plant in the year 2015, did you, sir?

2 A No, you --

3 Q Thank you. Now, Mr. Madan --

4 A I am not sure I finished my analysis. I am
5 saying --

6 MR. ROLFE: Judge, the witness has answered
7 the question. It didn't call for an explanation.

8 JUDGE MILLER: I think that is correct. We will
9 give you an opportunity, I am sure, if it be deemed
10 necessary. Go ahead.

11 BY MR. ROLFE: (Continuing)

12 Q Now, Mr. Madan, in arriving at the fuel offset
13 the way you postulated it, you assumed that oil -- that the
14 cost of oil would increase at a rate of twelve and a half
15 percent a year, is that correct, sir?

16 A I assume it would increase at the same discount
17 rate that was used in the model which I believe is twelve
18 and a half or thirteen percent.

19 Q Mr. Nozzolillo's model used a discount rate of
20 13 percent, is that correct?

21 A Well, his updated model, which has many changes
22 to it, yes.

23 Q The model on which he based his testimony used
24 a discount rate of 13 percent, isn't that correct, sir?

25 A That is correct.

1 Q And you assume that the increase in price of
2 oil, then, would be 13 percent a year?

3 A Yes. In essence, we have actually assumed a
4 present value having a range from -- having a range up to
5 50 million dollars, which would assume that discount rate.
6 Our analysis indicates there would be a range -- there would
7 be some savings with a cap of 50 million dollars.

8 Q Did you provide in your testimony what the lower
9 portion of that range would be, sir?

10 A Our testimony indicated that even if you didn't
11 assume any savings, you would still have a detriment of four
12 million dollars. That would increase by the total amount of
13 the present value of fuel savings.

14 Q Mr. Madan, again I don't think you answered my
15 question. We were focusing on the fuel offset, and you just
16 told me that there was a range to the amount of the fuel
17 offset. You said the upper end, I think, was 50 million
18 dollars. I asked you whether your testimony included the
19 lower end of that range for the fuel offset.

20 A It didn't compute it specifically. It said
21 it is some number up to 50 million dollars.

22 Q Now, Mr. Madan, isn't it a fact that in Mr.
23 Nozzolillo's analysis, that he did not postulate that all
24 expenses would increase at the rate of 13 percent as he
25 increased his expenses going forward from the year 1985?

1 A The model on which he based his testimony?

2 Q Yes, sir.

3 A Yes.

4 Q In fact, for the most part Mr. Nozzolillo is
5 saying the six percent inflation rate in that model, didn't
6 he?

7 A Yes, I think that is generally correct.

8 Q Did you compute the amount of your fuel offset
9 by assuming the same inflation rate that Mr. Nozzolillo
10 used in his model, sir?

11 A We examined it. I don't think we specifically
12 computed it. Our impression is it would be roughly half.

13 Q You haven't computed it, however, have you?

14 A No, we have not computed it.

15 MR. SEDKY: Would you like them to do that now?
16 Is that a question.

17 MR. ROLFE: That wasn't the question.

18 BY MR. ROLFE: (Continuing)

19 Q How would you compute that number, sir?

20 A I believe we would take the current fuel savings
21 of fifty million dollars, escalate that number out thirty
22 years based upon a compounded inflation rate of six and a
23 half percent, and then discount it back by 13 percent.

24 Q Are you capable of performing that calculation
25 as you sit there, either you or Mr. Dirmeir?

1 A No, I don't believe -- I think we need a machine
2 capable of -- I don't have one with me.

3 MR. ROLFE: Judge Miller, for purposes of
4 completion of this cross examination, might I ask the
5 witness to approach that blackboard, and just write up the
6 formula. I know he can't perform the actual calculation, but
7 if he could just write it up so that at some point somebody
8 could run a number on it we could put in this record.

9 JUDGE MILLER: Well, is there any objection?

10 MR. SEDKY: I object to that. They have experts
11 here. If they want to make computations, let them make
12 computations.

13 MR. ROLFE: Judge Miller, I will be happy to put
14 on a witness later to do that computation if the County
15 agrees that that is what LILCO should do.

16 MR. SEDKY: No, I am not agreeing to that. You
17 have your case, and we have our case. You can cross examine
18 our witnesses as to any questions you have of our witnesses,
19 but I am not going to have them go out and make computations
20 for you.

21 MR. ROLFE: Well, I am asking them if they
22 are capable --

23 JUDGE MILLER: Let's stop quibbling. What is
24 it that you want to have put on the blackboard or otherwise
25 testify to?

1 MR. ROLFE: Just the formula about which they
2 would compute that number, and just put up the numbers. I
3 know they can't arrive at the answer.

4 MR. SEDKY: Your Honor, they have testified
5 as to the process. He is asking them how would you do
6 it, and he told them what they do.

7 JUDGE MILLER: I think they have. What more
8 do you need for the record, or to recapitulate the operation,
9 than the testimony that you just got. Is there anything
10 lacking?

11 MR. ROLFE: It is from my understanding, Your
12 Honor, but let me try to go about it this way.

13 BY MR. ROLFE: (Continuing)

14 Q Am I correct, sir, that in computing that figure,
15 one would take the fifty million dollars that you begin with
16 as your 1985 fuel differential, you would multiply it by
17 1.065 to the 30th power, and you would then divide it by
18 the product of 1.13 to the 31st power, times .96, and that
19 figure would reflect the gross revenue tax?

20 MR. SEDKY: I wonder, Your Honor, if we could
21 have a proffer as to what relevance this is. I don't believe
22 he has established --

23 JUDGE MILLER: I don't think he needs proffer
24 relevance on cross examination. I think he can ask the
25 witnesses. Is this something -- is this formula susceptible
of anything in your expert judgment.

1 MR. SEDKY: Your Honor, I just want to clarify
2 my objection, and that is unless I am mistaken, that is not
3 what they did in their analysis. All he seems to be asking
4 for is this one way that one might do it, and maybe I am
5 wrong, but I don't believe that is what they did.

6 JUDGE MILLER: I thought they said something
7 about using certain --

8 MR. SEDKY: That is not what they did; that
9 is not what they did.

10 JUDGE MILLER: Well, we will find out. First
11 of all, does this formula, or whatever it is, make any
12 sense to you? Is it something that could be done in any
13 meaningful way?

14 WITNESS MADAN: I believe the formula is
15 approximately correct.

16 JUDGE MILLER: All right. Now, are there factors
17 that are not in the record now from which a computation could
18 be made by your witnesses or anyone else?

19 MR. ROLFE: No, Your Honor.

20 JUDGE MILLER: All right. Go ahead.

21 MR. ROLFE: Thank you. Your Honor, may I have
22 one moment to consult with my colleague?

23 JUDGE MILLER: Sure.

24 MR. ROLFE: Your Honor, at this point I am at the
25 completion of my cross examination on the first phase of the

1 witnesses testimony.

2 JUDGE MILLER: All right. Let's complete that
3 first of all, and then Motions may be heard. We go now to
4 Staff.

5 MR. PERLIS: Your Honor, the Staff has no questions
6 on this phase of their testimony.

7 JUDGE MILLER: All right. State of New York?

8 MR. ZAHNLEUTER: Likewise no questions.

9 JUDGE MILLER: Redirect?

10 MR. SUDKY: We have just very brief redirect.

XXX INDEX

11 REDIRECT EXAMINATION

12 BY MR. SEDKY:

13 Q Mr. Madan, before you were cut off by Mr. Rolfe
14 in response to a question he had posed to you considering
15 whether or not you had factored in a capital cost of a new
16 fuel plant, you were attempting to explain further your
17 answer.

18 Would you do so at this time, please?

19 A (Witness Madan) Sure. I think it goes without
20 saying that any appropriate analysis of the issue has to take
21 account of an equivalent period of time that looks at both
22 the energy and the base costs of any plant that is assumed.

23 For purposes of simply showing that the analysis
24 should not be cut off at the year 2000, what we attempted to
25 do was to extend Mr. Nozzolani's model to the period of time

10-11-Wal

1 when you got an equivalent amount of energy out of the
2 plant.

3 In our scenario, we simply went three months
4 beyond the date of if the plant went into service early.
5 If the plant goes into service three months later, we
6 assumed it would terminate three months later. In terms
7 of an approximation as to what the value of the savings
8 would be at that point, we assumed that point; if the plant
9 stopped early, in fact, it would have to displace oil,
10 and that was the assumption of the energy makeup in the
11 model that we presented.

12 If any alternative is to be postulated, for
13 example a nuclear plant as being an argument that these
14 fuel savings may not exist in the future, I think it is
15 apparent that when you take the tremendous mismatch you
16 have even here today, is if in fact you put a nuclear
17 plant in at the cost we are talking about, base rates go
18 up approximately three times greater, net of the fuel
19 savings.

20 In other words, if the fuel savings are
21 fifty million dollars, the base rates are going up at
22 200 million dollars to get a net increase of 165 million.
23 That is what you are talking about. So, if you go out
24 and postulate any possibility of a replacement plant,
25 those costs have to be taken into consideration.

1 All we are saying is that if much is to be made
2 about the so-called fifty million dollar savings up front,
3 which is not really a savings -- it is a net 165 million
4 dollar cost -- then at the back end there is an equivalent
5 amount that has to be brought to a present value.

6 That number is going to be somewhat less than
7 50 million dollars. It is some number. Even without that,
8 there is a detriment of four million dollars, if you assume
9 an additional detriment of 40, then you get to 44. If you
10 assume an additional debt from end of 25, half, you get
11 29 million dollars, but the number gets worse, and there
12 is no possibility of having a benefit in the future.

13 It has to be a detriment, because you are making
14 up that same energy that the Company is relying on in the
15 early years for its savings.

16 Q Mr. Madan, also early on in the examination,
17 I think, at the very beginning, you were asked concerning
18 your representation of members of a coalition in certain
19 rate proceedings pending before the Public Service Commission
20 of New York. Mr. Rolfe identified Suffolk County as a member,
21 one of the members of the Coalition. Would you, just so that
22 the record is complete, identify the other members of the
23 coalition?

24 A Some of the other members of the coalition would
25 be the Consumer Protection Board of the State of New York.

10-13-Wal

1 The Town of Hempstead, the County of Nassau,
2 -- this is cumulative in the rate proceedings. I am going
3 from memory, but I believe the Town of Brookhaven, and
4 there may be one or two other members who I just can't
5 recall at this point.

6 MR. SEDKY: Thank you. That is all I have on
7 this phase of the examination.

8 JUDGE MILLER: Any cross related to the
9 redirect?

10 MR. ROLFE: Yes, Your Honor.

11 REXCROSS EXAMINATION

12 BY MR. ROLFE:

13 Q Mr. Madan, when you stated that no matter what
14 the fuel offset would be, it would still result in a
15 detriment in terms of present worth dollars, you were
16 assuming, were you not, that your 28 million dollar mismatch
17 is, in fact, a mismatch?

18 MR. SEDKY: Objection, Your Honor. I hate to
19 be picky, but I don't believe he is entitled to cross examine
20 on that point. Mr. Rolfe cut this witness off from completing
21 his answer.

22 Had he had the courtesy to permit him to
23 complete the answer, he would have had the opportunity to
24 follow up. I suggest that he be stopped from asking any
25 questions on cross that go to an answer that he was not

XXXX INDEX

1 permitted to complete.

2 JUDGE MILLER: That is cutting it a little fine.
3 The witness may answer. Do you recall the question?

4 WITNESS MADAN: Yes. My answer says that the
5 impact of the fuel is in that detriment, and the end result
6 therefore takes it from the point we had reached up to the
7 point, which was a negative four million, which assumes the
8 28 million dollar mismatch, and simply exacerbates the detriment
9 to some greater number than four million dollars.

10 BY MR. ROLFE: (Continuing)

11 Q Well, the way you went into it in your testimony
12 was by first starting out with the proposition that LILCO
13 should have looked at the years 2000 to the year 2015, and
14 you first said there was a fourteen million dollar benefit
15 to the ratepayers from early operation in the interim
16 years, and then you had to offset that by the fuel offset
17 at the end, if I understand correctly.

18 MR. SEDKY: Now, your Honor, that is clearly beyond
19 the scope of the question I asked.

20 MR. ROLFE: No, it isn't, Your Honor.

21 JUDGE MILLER: I don't even know what it is.
22 What is your question?

23 MR. ROLFE: (Continuing)

24 Q The question is, Mr. Madan, if your fuel offset
25 comes out to be a number lower than the fourteen million

1 dollar benefit for that year, -- let's hypothesize that
2 the fuel offset is ten million dollars, then you end up
3 with a net benefit by considering the years 2000 to 2015,
4 which LILCO didn't include in its model, is that right?

5 A Well, I am starting out with a negative four
6 million dollars, which already gave you the benefit of the
7 fourteen. You have to look at the fourteen not in isolation.
8 You -- we, by no means, conceding that if you look at the
9 years 2000 to 2014, that the starting point is a fourteen
10 million dollar benefit. That is erroneous.

11 Q Well, that is in your testimony, sir.

12 A Let me finish. All I am saying is that our
13 position is, I think, stated pretty clear, is that you look
14 at a constant output of a plant, which includes the time frame
15 2000 to 2014. The net result of that calculation up to that
16 point brings us to a detriment of four million dollars.

17 Q Based on your 28 million dollar mismatch, is
18 that correct?

19 A Yes, I have already said that. And that only
20 gets worse when you then include the fuel penalty in the
21 last three months of the analysis.

22 Q Well, you will agree with me, will you not,
23 that it wouldn't get worse if the fuel offset were less than
24 the benefit of fourteen million dollars, which you describe
25 as an incremental benefit of fourteen million dollars for

1 the years 2000 to 2015?

2 A It wouldn't get worse from the 18 million dollars.
3 It gets worse from the four million dollars, already taking
4 the fourteen off. You start at eight, you take off 28,
5 you end up at 16. You take off the 14 -- I guess my
6 -- you end up with a minus 18.

7 You take off the benefit of the 14 from the 18,
8 you are at four. Now, all you have to do from the four,
9 which already includes your benefit, is then you slide down
10 from that point. Up to 49 million dollars.

11 End 10.
12 Mary fols.

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. ROLFE: Thank you, Mr. Madan.

I don't have any further questions.

WITNESS MADAN: Thank you.

JUDGE MILLER: The staff?

MR. PERLIS: The staff has no recross.

JUDGE MILLER: New York?

MR. ZAHNLEUTER: No questions.

JUDGE MILLER: I assume this ends our ---

MR. SEDKY: I think that ends Phase I, Judge
Miller.

JUDGE MILLER: Pardon:

MR. SEDKY: I think that ends Phase I.

JUDGE MILLER: All right.

Now I think in order to keep similiar issues
together, I think this would be an appropriate time for
whatever motions, if any, there would be in connection
with Phase I.

MR. ROLFE: Judge Miller, with respect to
Phase I, I have two things that I would like to bring up
with the Board.

First, LIILCO moves to strike ---

JUDGE MILLER: Pardon me. Had you offered
whatever exhibits there are that are connected with Phase I
that you want to propose be admitted into evidence? It
would probably be appropriate to let you do that so we have

11-2

1 the whole picture.

2 MR. SEDKY: Your Honor, it is difficult. Our
3 analysis of the issues are not as susceptible to the discreet
4 analysis that both the Board and LILCO seem to perceive in
5 that we see the testimony all tied in as one unit.

6 However, assuming that the testimony is susceptible
7 to divisions that Your Honor indicated at the commencement,
8 at that point I would surmise, without being held to this,
9 that LP-23 deals with Phase I, and I would move that.

10 JUDGE MILLER: Is there any objection to ---

11 MR. SEDKY: --- and I would move that into
12 evidence.

13 JUDGE MILLER: Any objection to the admission
14 into evidence of Suffolk's for identification LP-23 which
15 was Attachment 4, I think, as originally described in the
16 prefiled testimony?

17 MR. ROLFE: Yes, Your Honor, and it goes to ---

18 JUDGE MILLER: Why don't you offer what you
19 want in the way of exhibits, and we will then hear whatever
20 motions and objections there are sequentially.

21 MR. SEDKY: Very well, Your Honor. In that
22 case I offer them all, LP-23 through 28.

23 JUDGE MILLER: Very well. Now who wants to be
24 heard? LILCO?

25 MR. ROLFE: Yes, please.

Sim 11-3

1 JUDGE MILLER: Go ahead.

2 MR. ROLFE: LILCO moves to strike, or has two
3 motions to strike to bring to the Board's attention at
4 this point.

5 The first of these is that LILCO moves to
6 strike the entire first portion of Messrs. Madan and
7 Dirmeier's testimony going from the beginning all the way
8 to page 21, to the middle of the page where heading "B"
9 begins on the grounds that the testimony is irrelevant
10 and incompetent, and that would also include the proffered
11 Exhibit LP-23, which is the only exhibit which has been
12 referenced in that portion of the testimony.

13 The basis for this motion is that the sole
14 relevance as purported in the testimony of this testimony
15 is to comment upon a perceived error in LILCO's analysis
16 which was contained in Mr. Nozzolillo's testimony.

17 There is no independent analysis performed
18 by these witnesses. They have stated that they have no
19 independent knowledge of the underlying facts that went
20 into Mr. Nozzolillo's testimony or the fact that would be
21 pertinent to an economic analysis.

22 What they have done is purportedly taken the
23 analysis Mr. Nozzolillo made in his testimony and examined
24 it and come up with their own conclusion that based on
25 the model used in his testimony, there are mismatches and

Sim 11-4

1 there are errors in conceptual matters which lead them to
2 conclude that there is a detriment.

3 In fact, the testimony has shown that the
4 model that they have addressed in their testimony, the
5 results and the numbers that they have addressed in their
6 testimony were not the numbers used by Mr. Nozzolillo. They
7 have stated that they are not prepared to address the
8 numbers used by Mr. Nozzolillo and they don't have any
9 independent numbers.

10 So, therefore, to the extent that this testimony
11 purports to address an analysis which is not the analysis
12 which LILCO has proffered to this Board, it has no relevance.

13 To the extent that it purports to address
14 anything else, the witnesses have no knowledge of any facts
15 which would support it. That is the first ground.

16 The second motion to strike is to a particular
17 question, Your Honor, and I can either address that now or
18 wait until the Board has heard from the other parties on
19 that.

20 JUDGE MILLER: You might as well cover everything
21 you want.

22 MR. ROLFE: All right. In that case, Judge,
23 the second portion of LILCO's motion to strike would go
24 to the question beginning on page 20, the question and
25 answer beginning on page 20, and including the first

Sim 11-5

1 three lines of page 23.

2 The question is "LILCO has claimed that
3 earlier low-power testing will result in significant savings
4 and oil consumption. Do you agree with this claim?"

5 And Messrs. Dirmeier and Madan go on to explain
6 why they don't agree with that claim. This should be
7 striken on two bases.

8 First, the witnesses stated in voir dire that
9 they are not competent to address when plants get put on
10 line and when they get taken out of service. Both witnesses
11 stated they had never had any experience in the operation
12 or maintenance of electric generating plants. Both stated,
13 I believe, that they had no -- well, Mr. Madan did state
14 that he had worked for a utility, and I had asked him
15 specifically whether he was involved in decisions as to
16 when plants should be brought on line or taken out of
17 service, and he said he had none.

18 The factual predicate for this answer, Your
19 Honor, is the assumption that there would be no change
20 in the time Shorcham would be brought on line or taken
21 out of service as a result of the difference in commercial
22 operation date, or to put that a little more clearly, this
23 answer is predicated on the assumption that if it comes on
24 line July 1, 1985 that it will generate the exact same amount
25 of electricity up to the point it is taken out of service as

Sim 11-6

1 it would if it came on line October 1, 1985 and it just
2 stopped.

3 These witnesses don't have any competence to
4 express an opinion that that indeed would be the case, and
5 they don't know that is the case. So there is no basis
6 for the assumption which underlies this answer.

7 The second reason for striking this particular
8 answer is that again these witnesses purport to be addressing
9 the model and the program and the numbers that
10 Mr. Nozzolillo used in his analysis. Remember, these
11 witnesses did not do any independent analysis.

12 Yet, they have admitted on cross-examination
13 that the numbers they used in bringing forward and in
14 escalating the price of oil over the 30-year life of the
15 plant that they postulate were not in fact the same numbers
16 Mr. Nozzolillo used in escalating all of the other costs
17 of the plant. They have used different numbers and therefore
18 they haven't addressed Mr. Nozzolillo's conclusions. And
19 to the extent that they have used different numbers, their
20 conclusions that they purport to criticize Mr. Nozzolillo's
21 and LILCO's evidence are misleading and irrelevant.

22 JUDGE MILLER: The staff?

23 MR. PERLIS: Mr. Chairman, the staff takes
24 no position on the admissibility of this portion of
25 Mr. Dirmeier and Mr. Madan's testimony.

Sim 11-7

1 JUDGE MILLER: Well, I thought you did take
2 a position on the response on page 2. The staff does
3 not quarrel with the relevance of the testimony challenging
4 the economic benefit to low-power operations. Isn't that
5 what the staff said?

6 MR. PERLIS: That is correct.

7 JUDGE MILLER: Are you changing your position?

8 MR. PERLIS: No. First of all, the objection
9 I believe also goes to the professional qualifications
10 of these gentlemen to support their testimony, and the
11 staff would ---

12 JUDGE MILLER: Now those are two different
13 matters now. Is the staff changing or is the staff sticking
14 by its position?

15 MR. PERLIS: The staff is not changing its
16 position and I would not object to its admissibility.

17 JUDGE MILLER: You don't quarrel with its
18 relevance, do you, or do you?

19 MR. PERLIS: I am not ---

20 JUDGE MILLER: The staff shouldn't be namby-
21 pamby. Take a stand.

22 MR. PERLIS: I do not object to its relevance,
23 no.

24 JUDGE MILLER: All right. You find no reason
25 to object to the proffered relevance of this portion

Sim 11-8

1 of the testimony, right?

2 MR. PERLIS: That is correct, and I don't
3 believe ---

4 JUDGE MILLER: Have you got something else
5 you would like to add to your position?

6 MR. PERLIS: No.

7 JUDGE MILLER: All right. You pointed out in
8 your response that assuming that the authors are found
9 qualified to support such testimony, a matter the staff
10 does not address here, and the staff would not object
11 to its admissibility.

12 MR. PERLIS: And I don't believe I objected to
13 it here today.

14 JUDGE MILLER: Now do you object to its
15 admissibility?

16 MR. PERLIS: No. I believe I indicated that
17 I don't.

18 JUDGE MILLER: I understand. The record is
19 clear.

20 The State of New York?

21 MR. ZAHNLEUTER: Yes, sir. I believe the
22 counsel for Suffolk County moved several exhibits into
23 evidence and the State would have no objection to that
24 motion.

25 With respect to LILCO's motions to strike,

Sim 11-9

1 with regard to the first one, I think that it would be
2 perfectly fair for a witness to comment on the basis for
3 the testimony of another witness. I think it would help
4 to focus the issues for the Board.

5 With regard to the second motion to strike,
6 I think that the points raised address more the question
7 of the weight of the evidence rather than the admissibility.

8 JUDGE MILLER: Thank you.

9 The County?

10 MR. SEDKY: Yes, Judge Miller, just briefly.

11 The fact is that these witnesses did make an
12 independent analysis. The fact that they didn't make an
13 independent analysis with respect to raw data is a function
14 of two factors.

15 First of all, there is no reason to have done
16 that and, secondly and more importantly, they asked for
17 the raw data and were not permitted to receive it.

18 Secondly, it is their expert opinion that having
19 reviewed the second computer run that it does not make any
20 material impact on their testimony. On their conclusions
21 Mr. Rolfe had an extensive and unsuccessful effort to
22 move them from that position. That is still their position.
23 So their testimony stands on that score.

24 He says they have no knowledge of facts to
25 support the underlying data in the computer runs. Well,

Sim 11-10

1 that is true, and that is again because they asked for
2 those underlying facts in discovery and were denied the
3 opportunity to have access to them.

4 With respect to the second portion of the motion,
5 and that has to do with the so-called what I refer to as
6 a recapture of the fuel savings. In other words, their
7 point is very simple. I think they have made it and
8 perhaps Mr. Rolfe didn't understand it, but I have every
9 confidence that the Board will understand it.

10 It is like buying a car. A car has a useful
11 life. It is going to run however long it is going to run.
12 They used 30 years because Mr. Nozzolillo's models generally
13 run 30 years, although he cut it off for purpose of analysis
14 at 20 years. You could have used, as he said, 364 days, or
15 you could have 29 years or you could have used 50 years.

16 The point is that there is a useful life of this
17 plant, whatever it is, and it is an elementary point. If
18 you start three months early, you are going to end three
19 months earlier, and that is all there is to it. Your
20 car is going to run out whenever it runs out, and if you
21 start it sooner, it is going to run out that much sooner.

22 You don't need to be an expert on how long
23 this particular plant is actually going to run. You don't
24 have to be an expert on whether it is going to run longer
25 or shorter or what the period is going to be.

Sim 11-11 1

2 MR. ROLFE: Judge Miller, may I respond just
to the last point briefly?

3 JUDGE MILLER: I am not sure if counsel is
4 through yet.

5 MR. ROLFE: I am sorry. I thought he was
6 through.

7 MR. SEDKY: I only have one other point on
8 that second portion. It is a subset of the first point.
9 They keep complaining that our witnesses were addressing
10 the prior computer runs. It is their expert opinion, and
11 I believe it is confirmed by Mr. Nozzolillo in his testimony,
12 that the adjustments he made for his subsequent computer
13 runs do not materially change the analysis.

14 I think that question was asked to him directly
15 and he said that is correct, eight million is eight million,
16 and I don't think that is an issue of legitimate dispute.

17 JUDGE MILLER: You had a brief response you
18 said?

19 MR. ROLFE: Yes, Your Honor. I do apologize
20 for interrupting counsel. I thought he was through.

21 Just as to the elementary nature of the
22 assumption that Mr. Madan and Mr. Dirmeier have made, I
23 think it should be pointed out that it is possible, and
24 we don't have any testimony because Mr. Madan and
25 Mr. Dirmeier were not quaified to give any testimony in

Sim 11-12

1 that area, that utilities don't take plants out of service
2 on the day they break down.

3 Utilities with foresight might take plants
4 out of service in off-peak periods so that they can bring
5 new plants into service during off-peak periods so they
6 don't have to make those changes during peak periods.

7 Now if that is the case, Your Honor, there is
8 not necessarily any direct correlation between the date the
9 thing goes in service and the date it goes out of service
10 and how long it is used.

11 The point is that Mr. Madan and Mr. Dirmeier
12 have no competence to address that, and they have made an
13 assumption which they have no qualifications to make and
14 which is not based on this testimony in any way.

15 JUDGE MILLER: If the Board understands you
16 correctly, we are not talking really about how long it
17 is going to be in operation as a physical matter. We are
18 simply using whatever tools the experts on both sides have
19 told you you use for analytical purposes. That is the
20 way we understand it, and we think it applies both to
21 your witnesses' testimony as well as to these witnesses.

22 The Board will rule that the testimony of the
23 witnesses and the related exhibits on the Phase I, if we
24 can call it that, of the testimony proffered will be
25 admitted.

Sim 11-13 1

Yes.

2 MR. ROLFE: It ought to be made clear that there
3 is only one exhibit which was proffered in Phase I. I
4 have not addressed the other exhibits because they come into
5 Phase II. Only Exhibit LP-23 is proffered and referred
6 to in Phase I of the witnesses' testimony, and that would
7 be the only exhibit that is under consideration right now.

8 JUDGE MILLER: Where is that referred to? It
9 would be as Attachment 4 I think in the original body of the
10 testimony.

11 MR. ROLFE: Yes, Your Honor, it is Attachment
12 4.

13 JUDGE MILLER: What page?

14 MR. ROLFE: If Your Honor will give me a moment,
15 I will try to find it.

16 (Pause.)

17 MR. SEDKY: Your Honor, we did proffer them
18 all, just so there is no misunderstanding about it.

19 JUDGE MILLER: They were all proffered. I
20 see Attachment 3 here at page 6. I don't know what that
21 is.

22 MR. ROLFE: Attachment 4 is mentioned on page
23 8, Your Honor, in the first full paragraph.

24 JUDGE MILLER: Counsel has tendered all of the
25 exhibits.

Sim 11-13 1

2 MR. ROLFE: Yes, Your Honor, but I had understood
3 that Your Honor wanted me to wait and address the subsequent
4 portions of the testimony, and I assumed that would include
5 the subsequent exhibits when we got to that.

6 JUDGE MILLER: Well, I don't know whether it
7 is subsequent or not. In the conclusion of the first portion
8 of the testimony of the proffered experts a certain number
9 of exhibits were identified and they have now all been
10 offered at at the conclusion of the interrogation, direct
11 and cross-examination of the witnesses.

12 MR. ROLFE: Then may I address the other ones
13 just briefly?

14 JUDGE MILLER: Yes.

15 MR. ROLFE: I would object to their being entered
16 as evidence at this time.

17 JUDGE MILLER: Which ones? What are we
18 talking about?

19 MR. ROLFE: We are talking about LP-24, 25, 26,
20 27 and 28.

21 JUDGE MILLER: Hold it a minute now.

22 Do you object to Suffolk's for identification
23 LP-23?

24 MR. ROLFE: I object on the grounds that I
25 specified in my motion to strike which you have overruled.
So I understand that now that exhibit would be admitted.

Sim 11-14

1 That exhibit was mentioned in the first phase of the
2 testimony.

3 JUDGE MILLER: Okay.

4 Does the staff have any objection to 23?

5 MR. PERLIS: The staff does not have an objection
6 to 23?

7 JUDGE MILLER: New York?

8 MR. ZAHNLEUTER: We have no objection.

9 JUDGE MILLER: The Board will rule that
10 Suffolks' LP-23 exhibit for identification is admitted
11 into evidence.

12 (The document referred to,
13 previously marked Suffolk County
14 Exhibit LP-23 for identification,
15 was admitted into evidence.)

16 INDEXXXXX JUDGE MILLER: Okay. Now go ahead. You wanted
17 to discuss the balance of the proffered exhibits.

18 MR. ROLFE: Well, Your Honor, simply that the
19 balance of the proffered exhibits are premature to be
20 discussed at this time. None of them are referenced in
21 Phase I of the testimony which we have just completed
22 cross-examination concerning. Therefore, they aren't
23 properly proffered at this time. They don't have any
24 relvance to that portion of the testimony and the witnesses
25 did not rely on those exhibits or even mention them in

Sim 11-15

1 that portion of the testimony. So LILCO would object to
2 their relevance and object to their being offered as
3 exhibits at this time.

4 JUDGE MILLER: Staff?

5 MR. PERLIS: I would agree. That five exhibits
6 we are talking about now are three reports before the
7 Securities and Exchange Commission. I believe it is a Long
8 Island Lighting Company White Paper. And the last one
9 is a letter to Judge Robinson.

10 All of these deal with the financial state
11 of the utility at this point. None of them deal with the
12 benefits or detriments from Mr. Nossolillo's testimony which
13 these gentlemen were addressing.

14 MR. SEDKY: I hate to muddy the water,
15 Judge Miller.

16 JUDGE MILLER: Go ahead and muddy it. I am
17 trying to find what letter he is talking about.

18 MR. SEDKY: That would be Exhibit 28, LP-28,
19 Suffolk County LP-28 which used to be a 9.

20 JUDGE MILLER: Okay. Go ahead.

21 MR. SEDKY: Our problem from the point of
22 view of Suffolk County, and of course we have a completely
23 different approach to this testimony, is we don't think
24 you can bifurcate it that way.

25 In part, all of these exhibits, although they

Sim 11-16

1 deal with the financial condition of LILCO and deal with
2 the public interest ramifications that flow from that
3 financial condition, they also go directly to the assumptions
4 underlying the computer runs that Mr. Nozzolillo was basing
5 his testimony on concerning, you know, what a rosy picture
6 it is going to be in the year 1998 because we are going to
7 be able to borrow all this money and we are going to be
8 able to pay all these dividends and so forth and so on.

9 Our position is you can't even get to Septmeber
10 1st, 1985. So it goes directly to the assumptions underlying
11 Mr. Nozzolillo's testimony.

12 MR. ROLFE: Judge Miller, may I respond to that
13 just briefly?

14 JUDGE MILLER: Yes.

15 MR. ROLFE: I think what we have here is the
16 same attempt that Mr. Madan made in summarizing his testimony
17 his testimony yesterday, to change the prefiled direct
18 testimony.

19 If you look at the prefiled direct testimony
20 of these witnesses, they distinctly divide it up into two
21 phases. There is an "A" and there is a "B". Phase A begins
22 back on page 5 and you will see there is a Roman numeral
23 III. It says "Economic Effects of Granting the Exemption."
24 And then there is Part A which addresses LILCO's claim to
25 economic benefit.

Sim 11-17 1

And all of that is the portion that we were
just conducting cross-examination concerning. All of that
had to do with Messrs. Madan and Dirmeier's opinions concerning
LILCO's claim to benefit, the runs and the analysis that
LILCO made.

and Sim 6

Sue fols 7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

#12-1-SueT

2 Now, if you move over to Page 21 that part ends
3 and then we get into something which the County, in their
4 own testimony, has demoninated as Part B, other economic
5 effects of granting the exception. Now, this is the
6 portion of testimony that we are going to talk about in a
7 minute that the Board made some provisional rulings about
8 this morning.

9 But if you look at it, it doesn't make any
10 attempt to relate what comes after Phase B, or after Heading
11 B, to the portion of the testimony in Part A. It says:
12 Your prior testimony has dealt with LILCO's claimed economic
13 benefit resulting from LILCO obtaining a low power license
14 now rather than waiting until uncertainties surrounding
15 the TDI diesels have been resolved. Have you considered
16 whether the public interest would be served by having LILCO
17 engage in low power operation at this time?

18 And then they go off on a completely different
19 analysis. It is in that Part B that all of these exhibits
20 are referenced. Now, the County is trying to attach to those
21 exhibits, retroactively subsequent to the filing of their
22 testimony, a new meaning, a new element, something that they
23 never mentioned in their testimony and didn't have in mind
24 at the time.

25 And I think that that's improper in itself. I
also don't think the exhibits have any relevance to the

#12-2-Sue7

2 testimony of these gentlemen who have said that they accepted
3 LILCO's input and LILCO's figures at face value for purposes
4 of the analysis in Part A of their testimony. And that's all
5 they have done. They haven't attempted to look behind it.

6 So, you can't -- number one, even if they had,
7 even if they had tried to do that in their prefiled testimony,
8 which they didn't, and this is a completely new attempt
9 beyond their testimony, it would be inconsistent with what
10 they said they did.

11 JUDGE MILLER: Staff.

12 MR. PERLIS: I would agree. I don't think those
13 five exhibits have anything to do with the first sixteen
14 pages that we have just cross-examined these witnesses on.

15 JUDGE MILLER: State of New York.

16 MR. ZAHNLEUTER: No objection to the five
17 exhibits.

18 MR. SEDKY: If I could just respond, Judge
19 Miller, to some of the points Mr. Rolfe raised.

20 JUDGE MILLER: Yes.

21 MR. SEDKY: First of all, Your Honor, many of
22 these documents were discussed in Mr. Nozzolillo's testimony
23 on cross-examination. Mr. Nozzolillo made reference to
24 the 10-K; Mr. Nozzolillo made reference to the white paper.
25 In fact, I believe this Board said: Well, why don't we
have the white paper introduced at this stage? And we said

#12-3-SueT 1 that we would do it as part of our case. Consistent with
2 the Board's --

3 JUDGE MILLER: Which exhibit is that?

4 MR. SEDKY: The 10-K, Your Honor, is LP-24,
5 and the white paper is LP-27.

6 I don't believe, Your Honor, that evidence is
7 susceptible, I mean just the general rules of evidence are
8 susceptible to sort of, you know, a piece of evidence can
9 only be relevant to one discreet issue. That's not how the
10 real world works or trial practice works.

11 Evidence is relevant to Topic A and/or Topic B
12 and/or Topic C, or sometimes not at all. So, I just --

13 JUDGE MILLER: I suppose it's because you are,
14 a word I don't like, sponsoring in a sense those exhibits
15 by these witnesses for purely mechanical reasons.

16 MR. SEDKY: That's correct, Your Honor. We
17 could easily have gone through Mr. Nozzolillo and asked
18 him to identify the 10-K he was referring to, asked him
19 to identify the white paper he was referring to, and moved
20 the admission at that point.

21 It was our understanding that it was the Board's
22 practice --

23 JUDGE MILLER: Let's break out those which are
24 not necessarily related now to Phase One. If you have some,
25 such as the white paper you mentioned, or others that were

#12-4-SueT

1 the previous subject of testimony, or are otherwise relevant,
2 let's identify those separately if you can.

3 MR. SEDKY: Your Honor, al' of these documents,
4 in our view, the two that were mentioned by name and that
5 were the subject of Mr. Nozzolillo's testimony were the
6 10-K and the white paper, which are LP-24 and LP-27.

7 And it was --

8 JUDGE MILLER: Hold it there, please. Now, let
9 me find out, those two were mentioned I believe in
10 testimony, or were at least the subject of inquiry and has
11 been alluded to in some form or fashion.

12 MR. ROLFE: May I respond, Judge Miller?

13 JUDGE MILLER: Yes. I'm inquiring of you
14 whether that is a fact.

15 MR. ROLFE: Those exhibits were not mentioned
16 in Mr. Nozzolillo's direct testimony. What we have here
17 is a classic bootstrapping attempt, that counsel for the
18 County can ask a witness whether he is familiar with a
19 document and then by doing that make that document admissible
20 in his prefiled direct testimony --

21 JUDGE MILLER: No, no.

22 MR. ROLFE: Well, that's what happened.

23 JUDGE MILLER: Hold it. Hold it. I ruled that
24 you couldn't do that. That's why I said they had to do
25 it in their own case. But this is their own case now.

#12-5-SueT

MR. ROLFE: Yes, sir. I understand that.

2 JUDGE MILLER: Okay. Now, it's a different rule
3 being applied. Now, since the white paper has been referred
4 to, since the mention of it is in this proceeding, the
5 Board certainly, in the interest of having a complete
6 record, would want that document in.

7 Now, I'm simply shortcircuiting this by asking
8 counsel, who first mentioned it which I believe was cross
9 but nevertheless is in this record, that the document itself
10 be produced. Now we have it here. He is offering it into
11 evidence.

12 Now, why do you object?

13 MR. ROLFE: I --

14 JUDGE MILLER: I'm trying to get beyond the
15 technical requirements, because I don't see that your
16 witness put it in and I don't see they could put it in
17 through your witness. That's why I said in their own case.

18 But, now where they are it's a different proposi-
19 tion.

20 MR. ROLFE: All right. Judge Miller, let me
21 address that, then. I think the difference is when you
22 inquire of a witness on cross-examination and then try to
23 put a document in, the document can come in for one or two
24 purposes. It can come in for substantive purposes; it can
25 come in for impeachment purposes.

#12-6-SueT

2 Now, if they want to put that document in for
3 impeachment purposes in Mr. Nozzolillo's -- because they
4 refer to it in Mr. Nczzolillo's testimony, then Your Honor
5 may be correct and it ought to be put in the record for
6 that purpose. However, if they now want to put it in
7 for substantive purposes, then I object because it has no
8 relevance to their testimony.

9 JUDGE MILLER: Does it have any relevance to
10 their case or to the issues made in this proceeding, I
11 think is what one must look at.

12 MR. ROLFE: Not according to their testimony,
13 Your Honor.

14 JUDGE MILLER: Well, according to anything.
15 I'm not going to look for a pedigree. I just want to find
16 out is reasonable and make a full and complete record
17 which is our duty as a Board.

18 Suffolk's Number for identification, LP-24,
19 Attachment 5, are the filings before the Securities, SEC,
20 isn't it?

21 MR. ROLFE: Yes, sir.

22 JUDGE MILLER: It contains now a number of
23 items as judged by the index. I would like to get it
24 a little more refined than that if we could, because there
25 is no sense in encumbering the record unnecessarily, but
I think that since it is a matter that is referenced --

#12-7-SueT 1

2 MR. SEDKY: Judge Miller, pardon me. If I could
3 respond to the Board's concern on that score, in order to
4 not burden the record unduly we did not include, although we
5 are happy to do so if counsel wants, voluminous exhibits to
6 the Form 10-K. Customarily, these involve contracts and
7 other corporate documents, and we just left those out because
8 they weren't germane to issues that deal with Mr. Nozzolillo's
9 testimony.

10 MR. ROLFE: Judge Miller, if the document is to
11 be admitted as an exhibit for anything other than impeachment
12 purposes concerning Mr. Nozzolillo's testimony, then I think
13 it ought to be the entire document. I don't know what was
14 left out of this document.

15 But LILCO still maintains its objection to this
16 document.

17 JUDGE MILLER: All right. Since it's not going
18 to be in the transcript, all right.

19 MR. SEDKY: I will be happy to furnish the
20 exhibit supplementary to counsel if he is concerned about
21 that.

22 JUDGE MILLER: We really believe that from the
23 standpoint of a complete record the Board should see that
24 this is in, even if the Board has to mark it as its own
25 exhibit. We are not trying to put anybody to advantage or
disadvantage, but there are too many references made throughout

#12-8-SueT

1 about what has happened, what the financial situation is,
2 what statements have been made. Now, I suggested to counsel
3 to try to get together on a shorter statement of the
4 financial situation today, recently, without going into
5 other matters or unduly trying to extrapolate so the record
6 could show it. We have got a lot of references in every-
7 body's motion about the financial situation of LILCO.

8 Now, we haven't been able to do it, or at least
9 you haven't affirmatively come forward and said you did
10 do it. So I assume that you haven't.

11 This would have, or could have, some bearing
12 upon that very matter, I do believe. Representations made,
13 or findings contained in, this SEC -- what was that, by
14 the way? What was the nature of the SEC proceedings?

15 MR. SEDKY: Your Honor, that's a required annual
16 report.

17 MR. ROLFE: Judge, LILCO maintains and has
18 expressed the view in its motion to strike, which we will
19 discuss in a minute, the rest of this testimony, that its
20 financial condition is not an issue because --

21 JUDGE MILLER: Why not?

22 MR. ROLFE: Because the financial qualification
23 issue which those documents would go to is not a proper
24 issue.

25 MR. SEDKY: They don't deal with financial

#12-9-SueT
1

qualifications.

2 JUDGE MILLER: I didn't say financial qualifica-
3 tions. I said, why isn't the financial condition an
4 equity that you would want the Board to look into?

5 MR. ROLFE: As long as it's understood, Your
6 Honor, that that is the vein in which it is being offered,
7 I would agree with you.

8 JUDGE MILLER: You can't go into veins now.
9 If an exhibit is offered and it's in, it's in for all
10 reasonable purposes. You can argue it. You are going to
11 have plenty of chance to argue orally and in writing.

12 But an exhibit should be, if admitted and not
13 restricted either by the profferor or by the Board at the
14 time that it's entered, if not limited to some specific
15 purpose or reason, then it's available for any reason,
16 valid comments, use, whatever.

17 MR. ROLFE: Yes, Your Honor. But that's what
18 concerns me I guess, because the exhibits that we are
19 talking about have been proffered in the direct prefiled
20 testimony for a discussion of financial qualifications.

21 JUDGE MILLER: Well, right now they don't even
22 have the attachment. I have just stricken it. I've said
23 I will offer it on behalf of the Board if necessary, because
24 I want all possibly relevant and material matters made
25 part of this record. And I don't care who it helps and who

#12-10-SueT

2 it hurts. It probably will be some of both. I know we
3 have to look at equities. And, to me, an issue in a
4 proceeding such as this, equities are certainly going to
5 have to look at the financial situation now, both ways.
6 I make no bones about it.

7 MR. ROLFE: Judge Miller, as long as it's
8 understood that by admitting those the Board is not ruling
9 on LILCO's coming motion to strike the financial qualifica-
10 tions matter. I understand Your Honor's ruling, and I'm
11 not --

12 JUDGE MILLER: I'm not ruling anything on that.
13 I'm not putting it into the record on the issue of
14 financial qualification. I'm putting it as a fact. It
15 should be almost an undisputed fact, I suppose. It was
16 stripped out of characterizations and pejorative comments
17 as to what is the financial situation.

18 Now, to the extent that that is a proper,
19 legitimate inquiry to any of the material issues in this
20 case, it can be used by anybody. If it's attempted to
21 be used for some other purposes, we will certainly rule
22 on that as it comes up.

23 All right. Anything further? Staff.

24 MR. PERLIS: The Staff has nothing further.

25 JUDGE MILLER: State of New York.

MR. ZAHNLEUTER: I still have no objection.

#12-11-SueT

JUDGE MILLER: You are easy to get along with today.

All right. We will admit Suffolk County's Exhibit 1P-24 which is the 10-K, Form 10-K, filed with the Securities and Exchange Commission for the fiscal year ending December 31, 1983 by and on behalf of the Long -- of LILCO.

Is that a correct general designation?

MR. ROLFE: That's correct.

(The document referred to and marked Suffolk County Exhibit Number LP-24 for identification is admitted in evidence.)

JUDGE MILLER: Now, what is the next one?

MR. SEDKY: I think 27 is also the one we had specifically identified as having been discussed during Mr. Nozzolillo's testimony, and in addition during the cross-examination, and in addition the Board had some question about.

JUDGE MILLER: Now, what is the document?

MR. SEDKY: That is the so-called white paper that --

JUDGE MILLER: White paper?

MR. SEDKY: Yes, Your Honor. That's LP-27.

JUDGE MILLER: What is the relevance in this

INDEXXXXXX 11

#12-12-SueF

case?

2 MR. SEDKY: As I recall the cross-examination
3 of Mr. Nozzolillo, it went to the assumptions underlying
4 the computer runs that showed (a) that during 1985 and
5 onwards they would be making dividend payments on the
6 common stock, and (b) during 1985 and onwards would be
7 borrowing several hundreds of millions of dollars a year
8 and I believe the question was, you know, addressed the
9 reasonableness of those assumptions.

10 And he acknowledged that the Company had, in
11 effect, stated that they had no access to the capital
12 markets and there was some question as to where it had been
13 so stated. And I think he said it was in the white paper.

14 At that point, I believe Your Honor said --
15 that's what has triggered this whole issue, you know, why
16 don't you introduce it, and I said: Well, we will just
17 wait until our case in chief.

18 That's just to the best of my recollection,
19 Judge Miller.

20 MR. ROLFE: Judge Miller, may I respond to
21 that briefly? I won't repeat my arguments a moment ago,
22 but I think the summary of what happened with respect to
23 the white paper is completely out of whack, and I want to
24 read it to the Board. It's at Transcript Page 1382. The
25 witness was asked on cross-examination: And are you aware

#12-13-SueT

2 that the Company has stated in its white paper that further
3 austerity wouldn't help make the Company viable?

4 Answer: I don't know if that's stated. I'm
5 not familiar with the white paper.

6 Question: Have you --

7 JUDGE MILLER: Which witness is --

8 MR. ROLFE: Mr. Nozzolillo. Question: Have you
9 reviewed it?

10 Answer: I've read it.

11 And then there were, I don't believe, any
12 further -- there were not any further references to the
13 white paper after that.

14 JUDGE MILLER: Let me see if all counsel agree
15 with that. The Staff, the County and the State, have you
16 read it?

17 Are there any further references? I do recall
18 that portion. I do recall the witness saying he had seen
19 it but --

20 MR. ROLFE: That's correct. The question is,
21 he placed no reliance at that point. Now, I don't know
22 if it came up later in the examination, or cross-examination.

23 MR. SEDKY: Your Honor, not to make too fine a
24 point of it. If Your Honor looks at the white paper, you
25 would notice that although we talked about, at Page 1378:
You are aware, are you not, that the Company had stated

#12-14-SueT

publicly that it has no access to external funds at this
time?

Your Honor says: In what form did that representation occur?

I believe it was stated -- we've got it. I think it was the white paper that was filed with Governor Cuomo, Your Honor. And indeed, if Your Honor wishes, you will see that that white paper so states.

Now, in fairness, Mr. Nozzolillo said: I don't think it was stated here, counselor. But it was stated during the rate case proceedings.

The fact is that it is contained in this document. If you wish, I will point to the exact testimony or to the exact page.

JUDGE MILLER: Other than the page we have just had referred?

MR. SEDKY: There were two references to the white paper, that reference and the reference that Mr. Rolfe identified at least.

JUDGE MILLER: Let me hear from Staff while you are trying to locate that.

MR. PERLIS: Your Honor, I don't remember any other references. It is referenced at both Pages 1378-79 and at 1382. But, frankly I haven't reviewed the transcript. I don't know if there were other references or not.

#12-15-Sue1

2 JUDGE MILLER: Well, what's the Staff's position
3 on the admissibility of this white paper, LP-27 for
4 identification, by Suffolk County?

5 MR. PERLIS: The Staff's position is unchanged.
6 I don't see the relevance of the white paper to the whole
7 exemption request. And I'm not sure that it was relevant
8 to Mr. Nozzolillo's testimony.

9 Frankly, the Staff just doesn't see the
10 relevance of that document. I don't question the document.
11 I just don't see its relevance to what is before this
12 Board.

13 JUDGE MILLER: Well, does the Staff see any
14 potential materiality on the equity issue of the financial
15 situation, without making a big production out of it, the
16 financial situation of LILCO which is referred to in various
17 papers here, if not testimony, from time to time by both
18 LILCO and by the County and others.

19 It's like the weather, everybody talks about it.
20 Now is the time I would like to get something that would be
21 objective, reasonably limited, but reasonably available in
22 the record. Now, what do you say to that?

23 MR. PERLIS: I would trust that counsel for
24 LILCO will correct me if I'm wrong. I don't believe LILCO,
25 in its exemption request, is relying upon its financial
condition in any way.

#12-16-SueT

2 JUDGE MILLER: Now, that's not quite what I
3 said. The Board has to follow, and you are going to help
4 us understand and interpret the Commission's Order.

5 MR. PERLIS: I understand that.

6 JUDGE MILLER: The Footnote and the equity. And
7 the Board wants to know, when we are looking at equities,
8 both ways and all ways, why aren't financial considerations
9 of some relevance and possible materiality?

10 Do you want to think about that before you
11 answer it?

12 MR. PERLIS: Yes. Let me take that two separate
13 ways.

14 JUDGE MILLER: Okay.

15 MR. PERLIS: First of all, it could come into
16 consideration if the utility were to argue that it will
17 suffer financial hardship if the exemption is not granted.
18 I believe that the financial hardship that they have put
19 on in their direct case was the benefits talked about by
20 Mr. Nozzolillo and not the financial condition of the
21 Company as a whole.

22 JUDGE MILLER: I know that. Query: Is the
23 Board's development of a full record limited to what the
24 parties choose to rely on or not rely on? And I ask you
25 that as a Staff review of your public interest responsibili-
ties. Now, that's why I think maybe you had better think

#12-17-SueT

about it instead of answering right now.

2 Because I'm now calling the Staff to mind its
3 ultimate responsibility as an independent segment of NRC
4 which we, as a Board would want, and I would like to have
5 the Staff give considered judgment to that and other aspects;
6 two things, both the interpretation for the Board's purposes,
7 which encompasses all issues that we are aware of, of the
8 Commission's Orders, directives and guidance; and, secondly,
9 of the equity and other aspects of public interest, if you
10 will, and other matters.

11 We are going to look to the Staff now for some
12 comments at least. And I don't want you to just to answer
13 in terms of a short term admissibility argument.

14 END #12
15 Joe flws

15

16

17

18

19

20

21

22

23

24

25

1 MR. PERLIS: No, Mr. Chairman. I believe the
2 financial position of the utility to some extent could
3 be relevant to this hearing. I don't question that. I
4 also believe that similar to an operating license hearing,
5 I think the Board should be focusing on the issues raised
6 by the parties.

7 JUDGE MILLER: Why would it not be more similar
8 to some other types of hearings, inasmuch as the five factors
9 of late filing and reopening the record are not to be
10 considered as the Commission has told us, and the other
11 guidance, and the fact that there are certain matters to
12 be looked at somewhat differently, and the fact that
13 one reads in the Washington Post that the so-called Shoreham
14 Rule is somewhat unique, applies only to Shoreham, and not
15 tell the utility.

16 We want to hear from you on that, too, by the
17 way, because your boss was there when these things were
18 going on, so next week be sure you check out with that.
19 We are expecting some information from you in an orderly
20 way, but --

21 MR. PERLIS: Might I inquire what sort of
22 information we would be looking for there?

23 JUDGE MILLER: Well, one thing I would like to know
24 what is the so-called Shoreham Rule I read about, and why
25 is it peculiar to Shoreham, and various other things, because

1 I am looking at the equities, and I am trying to find guidance
2 which I don't find altogether clear in all respects, and I
3 think you know what I am talking about.

4 MR. PERLIS: Yes.

5 JUDGE MILLER: Talk to you next week on that one.
6 I think now on the ruling here, we are disposed not to get
7 into matters that transcends the things we must decide.

8 In other words, I have become a little concerned
9 now, and so are my colleagues, that when we get into such
10 things as the White Paper, we could be opening up a lot
11 of extraneous considerations, or at least those that are
12 somewhat speculative, and are unnecessary for our more
13 limited decision-making purposes.

14 So, unless there is something concrete that has
15 a pretty clear connection to what we must have before us
16 to decide, we would deny the admissibility, at least at
17 this time, of Suffolk County's LP-27, the White Paper.

18 Now, what other exhibits are before us.

19 MR. SEDKY: On that one point, Judge Miller,
20 and I am certainly not arguing with the Board, but you did
21 ask me to look up the reference to --

22 JUDGE MILLER: Yes, I did.

23 MR. SEDKY: It is on page 1. It says --

24 JUDGE MILLER: Page 1?

25 MR. SEDKY: Yes. Of the White Paper. In view

1 of LILCO's financial condition, external financing is not
2 presently available.

3 And that goes, Your Honor, to the cross examination
4 of Mr. Nozzolillo.

5 JUDGE MILLER: I think that it could. I think
6 what we are saying is that we believe that there are, perhaps,
7 other more objective methods of getting into this record the
8 financial situation, because we don't want it to become an
9 issue, and we don't want to have to get into speculation
10 or decide things other Boards are looking at, frankly.

11 For that reason we are trying to focus upon the
12 reasonable requirements. For that reason, I think we are
13 not going to accept the White Paper, because it obviously
14 covers many things.

15 MR. SEDKY: Your Honor, LP-25 through 27 -- I am
16 sorry, LP-25 and 26 are --

17 JUDGE MILLER: These are more reports, aren't
18 they?

19 MR. SEDKY: Yes. Those are just merely updates
20 on the 10-K, basically. It is a quarterly report, and --

21 JUDGE MILLER: Is there any objection to that
22 in view of the fact we have admitted the first one?

23 MR. ROLFE: Same objection I previously stated,
24 Your Honor, plus these reports are not referred to in Mr.
25 Nozzolillo's testimony, but there is no point in rearguing

1 it.

2 JUDGE MILLER: I understand that. But given
3 the fact that we have admitted 27, these would not be
4 inconsistent with that ruling, would they?

5 MR. ROLFE: No, sir; as long as, again, it is
6 understood the complete reports will be put in if they are
7 not complete.

8 JUDGE MILLER: If there are any omissions, we
9 would give anybody leave.

10 MR. SEDKY: Finally, Your Honor -- I am sorry.

11 JUDGE MILLER: Staff on 25 and 26?

12 MR. PERLIS: If the Form 10-K is in, the Staff
13 doesn't object to the admission of the additional documents.

14 JUDGE MILLER: State?

15 MR. ZAHNLEUTER: No objection.

16 JUDGE MILLER: All right. 25 and 26 are now
17 admitted.

XX INDEX

18 (The above mentioned documents
19 previously identified as Suffolk
20 County Exhibits 25 and 26, are
21 admitted into evidence.)

22 JUDGE MILLER: Okay. Next?

23 MR. SEDKY: Then, 28, Your Honor, is just a
24 letter that contains some very brief updated raw financial
25 information that brings up most of the information that was

1 in the 10-Q, up through more current projections of the
2 Company.

3 It was filed in the rate proceedings that have
4 been mentioned extensively in this record. Filed by LILCO
5 in the rate proceeding.

6 JUDGE MILLER: LILCO.

7 MR. ROLFE: Judge Miller.

8 JUDGE MILLER: Yes?

9 MR. ROLFE: For the reasons LILCO has already
10 stated, I don't believe that this would be pertinent or
11 relevant or material, which are the guidelines.

12 Moreover, this is not an official report as
13 were the other documents, and I don't think that consistency
14 would commend its admission into evidence, as it may have
15 exhibits 25 and 26.

16 I won't repeat my arguments concerning the lack
17 of relevancy of materiality. They would be the same.

18 Frankly, I am not sure what this information
19 purports to show, and the copy that I have been provided
20 is barely legible anyway, at least the tables.

21 JUDGE MILLER: Staff?

22 MR. PERLIS: I would just like to repeat. I,
23 again, don't see the relevance of this document. I think
24 it is merely cumulative to the documents that have already
25 been let in. I don't object to anything unique to this

1 document, however.

2 JUDGE MILLER: Do you understand what these
3 documents show?

4 MR. PERLIS: As I understand it, this document
5 is merely another indication of the Company's current
6 financial condition. I haven't looked at the document
7 that closely.

8 JUDGE MILLER: Are you able to?

9 MR. PERLIS: Not and get much out of it.

10 JUDGE MILLER: I think we will sustain the
11 objection to 28. I think we have the sufficient information
12 here.

13 The document itself is somewhat illegible, and
14 I don't think it is worth the time to try to ask you to
15 produce one better.

16 MR. SEDKY: Well, Your Honor, I would like to
17 take another shot at it, by offering a more legible copy
18 if that is the principal objection.

19 JUDGE MILLER: That is not the principal objection.
20 Well, do you contend that it contains information to the case
21 beyond these witnesses at this point, not reasonably covered
22 now by your other exhibits?

23 MR. SEDKY: Your Honor, all it does is that it
24 updates, and that is why I don't think there is a dispute
25 about that. Whatever objections Mr. Rolfe and the Staff had

1 with respect to the 10-Ks and the 8-K and the 10-Q, I don't
2 think this is a substantially different kind of document,
3 although it is in the form of a letter rather than a formal
4 report.

5 This was a filing made on behalf of LILCO. I
6 don't want to characterize it as a filing, because that is
7 a term of art I am not familiar with in these proceedings,
8 but certainly a document that was sent to an official of
9 the New York Public Service Commission.

10 I think in terms of any standard of authenticity,
11 reliability, and so forth, this is not the kind of
12 document that is --

13 JUDGE MILLER: Well, we are not worried about
14 that.

15 MR. SEDKY: I mean even probative. In terms
16 of the probative value of the document, I would suggest with
17 all due respect that this is -- certainly the same caliber
18 of reliability as filings with the SEC.

19 JUDGE MILLER: We don't have a problem with
20 that. What we have is we don't want to get into too much
21 detail, keep on updating, and then tomorrow updating, and
22 we think the information is sufficiently there for all
23 practical purposes.

24 MR. SEDKY: This is the last one, Judge Miller.

25 JUDGE MILLER: It is almost the last one. We will

1 sustain the objection.

2 Okay. Now, did you have any more you wanted
3 at this point?

4 MR. SEDKY: That is it.

5 Now, let's take about a fifteen minute recess.
6 I take it then we will receive with the balance of whatever
7 it is you want.

8 MR. SEDKY: Correct, Judge Miller.

9 MR. ROLFE: Judge Miller, when we return from
10 the recess, I think LILCO still had a second point of its
11 Motion to Strike pending. The point about the question
12 relating to the oil consumption, and the LILCO would be
13 prepared to discuss its Motion to Strike the other portions
14 of the testimony in line with the procedure Your Honor
15 suggested this morning.

16 JUDGE MILLER: You haven't made all of your
17 Motions?

18 MR. ROLFE: No, sir. We have just been
19 discussing Phase I, and when I did that, I made two Motions.
20 Your Honor ruled on the first, and you were about to rule
21 on the second when we got off track on this business of the
22 documents. The second you may recall related to the question
23 about the oil consumption, the fact that these witnesses
24 didn't have any expertise on when the plant would be brought
25 on .

1 JUDGE MILLER: I think we overruled that.

2 MR. ROLFE: I didn't understand that.

3 JUDGE MILLER: I said it. I should have made
4 it more clear that that was overruled. And then the
5 exhibits I think we have ruled on all that have been
6 proffered at this point.

7 MR. ROLFE: Then, in that case, when we come
8 back from recess, LILCO will be prepared -- since we are
9 getting into Phase B, which dealt with the three areas
10 Your Honor outlined this morning, to address its Motion
11 to Strike.

12 (Short recess taken.)

13 JUDGE MILLER: All right. I guess we are
14 now at the beginning of the second cluster of issues
15 addressed in this testimony. And those are the ones which
16 appear on pages -- the last part of page 21.

17 Essentially pages 22 on to some point that
18 I am not sure of. 28, perhaps. More than that.

19 MR. ROLFE: Judge Miller, if it would be helpful
20 to the Board, LILCO's position is that the two and perhaps
21 three themes that are discussed in Part B of this testimony
22 are really woven throughout.

23 I am not -- it is somewhat difficult to delineate
24 where one stops, and one resumes. And LILCO would be prepared
25 very succinctly to address those three themes in a Motion to

13-10-Wal

1 Strike now.

2 JUDGE MILLER: All right.

3 MR. ROLFE: LILCO moves to Strike all of Part B
4 of the testimony of Messrs. Madan and Dirmeier, beginning
5 in the middle of page 21 through the conclusion of that
6 testimony, on the grounds that that testimony purports to
7 discuss in the first instance whether LILCO is financially
8 qualified to operate the Shoreham plant safely, which is
9 an issue which the Commission has stated is not a relevant
10 inquiry for operating license proceedings.

11 LILCO's position with respect to that has been
12 argued at length before this Board in discovery. It has
13 been set forth in LILCO's written Motion to Strike.

14 Secondly, a theme addressed by this second
15 portion of the testimony which -- and this second theme
16 really begins, I guess, at page 43 -- approximately the
17 14th line, and continues over to page 47, is that there would
18 be some harm to the public if the plant ultimately did not
19 receive a full power license, and therefore had to be de-
20 commissioned, and therefore those uncertainties show that
21 the public will be harmed by granting this exemption.

22 The Commission has twice ruled in LILCO
23 proceedings that a consideration of whether a full power
24 license will be granted, and the uncertainties attendant
25 to that consideration are not proper and relevant considerations

1 attendant to the granting of a low power license and, again,
2 I won't repeat all of my previous arguments in those addressed
3 in the written Motion to Strike.

4 I would simply point out again that we are
5 not talking in this exemption proceeding about whether
6 Shoreham should be allowed to engage in low power testing.
7 Once the TDI diesel generators are licensed, LILCO will have
8 that right regardless of any uncertainties with respect to
9 a full power license.

10 We are simply talking now about whether the
11 right to engage in low power testing ought to be advanced
12 before the completion of the TDI licensing proceedings.

13 End 13
14 Mary fols

15

16

17

18

19

20

21

22

23

24

25

Sim 14-1

1 And the third area addressed and summarized
2 by Your Honor this morning is the effect or the exemption
3 on LILCO's customers and the level of its service, and
4 LILCO would object to the admissibility and move to strike
5 any such testimony in Part B of this testimony on the
6 grounds that, first of all, it is not relevant here.

7 Again, LILCO is going to engage in low-power
8 testing when it gets the TDS licensing proceedings completed.
9 To the extent that the fact of engaging in the those
10 low-power tests will affect LILCO's level of services,
11 it will affect the level of services whenever the costs of
12 low-power testing are incurred.

13 Again, we are not talking about whether low-
14 power testing ought to be allowed, but simply when.

15 Secondly, these witnesses have not expressed
16 anything in their prefiled direct testimony or on voir
17 dire which indicates that they have any competent personal
18 knowledge of the level of services which LILCO has rendered
19 or is rendering to its customers.

20 JUDGE MILLER: Staff?

21 MR. PERLIS: Without repeating too much of
22 the information we filed with the Board previously, the
23 staff agrees that all the rest of this testimony is not
24 relevant to this proceeding.

25 I do want to add that not only is the factual

Sim 14-2

1 evidence that LILCO's financial condition will have an
2 adverse effect on the safe operation of low power very
3 skeletal, but in questions asked of these gentlemen on
4 voir dire yesterday, they both testified that they have
5 no background in any technical area related to the safety
6 of operation of a nuclear power plant.

7 Nowhere in their testimony have they indicated
8 what effect LILCO's financial condition would have on low-
9 power operation at all, nor have any of Suffolk County's
10 other witnesses attempted to make such a proffer in their
11 direct testimony.

12 I don't think these gentlemen are competent
13 to testify as to the effects upon safety of LILCO's financial
14 condition. Therefore, this testimony just isn't relevant
15 nor is it probative.

16 JUDGE MILLER: Suffolk County?

17 The State of New York may go now if it wishes,
18 but I assumed that you wanted the County to go first.

19 MR. ZAHNLEUTER: Yes, Your Honor.

20 MR. SEDKY: Your Honor, I believe the staff
21 concedes the relevance of the testimony, but argues in
22 its response to the Suffolk County motion that although
23 potentially relevant, the witnesses' testimony isn't entitled
24 to either credence or hasn't sufficiently made an evidentiary
25 record, and I am just trying to find out.

Sim 14-3

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. PERLIS: If I may, I stand corrected.

If a link were drawn, the staff would not ---

JUDGE MILLER: If what, pardon me?

MR. PERLIS: If a nexus were drawn between financial condition and safety, the staff would not question its relevance. I don't believe that a nexus has been drawn and therefore we do concede the relevance here.

MR. SEDKY: Let me just as an organizational matter address Mr. Rolfe's two principal arguments.

First, let me make clear that the County in this proceeding does not seek to litigate the financial qualifications issue. There is a separate pending motion with respect to that that will presumably be heard at some point.

I don't want Mr. Rolfe to be confused that we are trying to do that in this proceeding. We are not before this panel and this hearing.

The issue that the County wishes to raise is the financial condition of Long Island Lighting Company as it pertains to whether or not it is in the public interest to engage in low-power testing now as opposed to waiting and basically whether it should get the exemption considering the financial condition of the company as it stands right now.

So just to make clear, we are not talking about

Sim 14-4

1 financial qualification under the Commission's rules and
2 we are not challenging in this proceed those rules and
3 we are not dealing with the question of the Court of Appeals
4 and what it has done to those rules and so forth.

5 Secondly, Mr. Rolfe I believe incorrectly
6 characterizes the question of whether or not it is appro-
7 priate to look at what happens if the utility does not
8 obtain a full-power license.

9 What they seem to be suggesting is that they
10 can make the assumption, as did Mr. Nozzolillo and Mr. Szabo.
11 Let's not forget, at least insofar as Mr. Szabo is concerned,
12 his entire testimony had to do with what happens when we
13 get full-power operation and how we are going to be come
14 less dependent on foreign oil.

15 Fine, if that is a benefit. If that is a benefit,
16 we ought to look at what is the other side of that. We
17 ought to consider well, what is the other side of that. What
18 is the benefit in engaging in low-power operation now when
19 we don't know whether or not there is going to be a full-
20 power license.

21 It is just simply the obverse, we want to
22 challenge the assumption that there is going to be any
23 benefit.

24 I don't think there is any dispute as a legal
25 matter among the parties here that there is a necessity

Sim 14-5

1 for making a public interest finding under 10 CFR Section
2 50.12(a). As I mentioned, this is separate and apart from
3 the whole financial qualifications question which is pending
4 elsewhere.

5 It is the County's position that a utility
6 in a particular financial condition, as this one is, should
7 not be authorized to be engaged in an inherently hazardous
8 activity of operating a nuclear power plant at any power
9 level. The reasons are many and obvious.

10 Evidence would show that LILCO lacks the
11 resources to assure that the activities for which the
12 exemption is sought can be conducted safely and in accor-
13 dance with the NRC regulations.

14 Now the staff says we have been able to make
15 that link. Again, that goes to the weight of the evidence
16 and not to its admissibility.

17 We have asked in the discovery proceedings for
18 detailed information concerning the impact of LILCO's
19 financial condition on the service to its customers, on
20 its ability to conduct safely and properly the low-power
21 testing. Those materials were not furnished to us.

22 So to the extent that our experts have been
23 unable to make that link, and I believe their testimony
24 does make that link, it is because they have been unable
25 to do so due to LILCO's refusal to furnish the information

Sim 14-6

1 that has been sought.

2 The evidence will also show that as a direct
3 and proximate result of LILCO's weakened financial condition
4 there is an increased risk of inadequate maintenance
5 and inadequate security.

6 The evidence would show that LILCO lacks the
7 financial ability to cope with any unpredicted exigencies,
8 whether those exigencies were nuclear related or otherwise.

9 The evidence would also show that LILCO lacks
10 the resources necessary to fund the activities in which
11 it proposes to be engaged or to shut the plant down safely
12 and decontaminate it if such action became necessary.

13 We don't believe that it is in the public
14 interest to simply assume that those actions can be under-
15 taken safely without an evidentiary record that, in our
16 view, demonstrates that they simply cannot do that.

17 The evidence would also show that LILCO's
18 existing financial condition has already adversely affected
19 public interest insofar as the customers are concerned and
20 if the customers' well-being -- let me rephrase that. I
21 don't think there can be serious dispute that the customers
22 of LILCO are part of the public interest, and to the extent
23 that the financial condition of LILCO is already adversely
24 affecting them, that any further expenditures that would
25 more adversely affect them should not be engaged in at this
time.

Sim 14-7

1 Now the standard of relevance, at least by
2 analogy to the Federal Rules of Evidence if whether the
3 evidence proffered has any tendency to make the existence
4 of any fact that is of consequence to the determination
5 of the action more probable than it would be without that
6 evidence.

7 That fact that is of consequence here and which
8 is in dispute in this proceeding is whether the exemption
9 is in the public interest.

10 LILCO's application at pages 15 and 16 asserts
11 that the granting of the exemption would be in the public
12 interest. Suffolk County contests that assertion.

13 So to the extent that the evidence as to financial
14 condition, and I am not talking about financial qualification
15 now, just to reiterate, deals with the public interest,
16 then the evidence is relevant and considerations as to the
17 adequacy of the link, as raised by Mr. Perlis, goes to
18 the weight and not to the admissibility of the evidence.

19 The second point that Mr. Rolfe raised has
20 to do with the uncertainty of low-power operation and
21 decommissioning costs as to whether those should be
22 considered.

23 All we are saying is whether these items should
24 be considered by this Board in deciding whether or not
25 to grant an exemption, which under the hypothesis that we

Sim 14-8

1 are all operating under, is a three-month differential. The
2 issue is whether this Board should consider the flip side
3 of what Mr. Szabo says.

4 If we start up three months early, we are going
5 to go forward three months early and look at all the benefits
6 that are going to happen. We are simply putting it as
7 a matter of logic. Look, that is fine. That is one scenario.

8 How about another scenario. You start up three
9 months early and you incur \$100 million in engaging in
10 this activity and you don't go forward. Isn't that just
11 something as a matter of logic that ought to be considered
12 in weighing the equities and in weighing whether it is in
13 the public interest to go forward at this time as opposed
14 to waiting three months?

15 Now in Mr. Rolfe's brief he says that the
16 Commission has made certain rulings on certain matters,
17 and that is true with respect to whether or not emergency
18 planning needs to be resolved before low-power can commence
19 and so forth.

20 To the extent that the Commission did not
21 require resolution of emergency planning issues before
22 considering an application for low-power license, that does
23 not make the uncertainty of full-power operation totally
24 irrelevant in this proceeding.

25 LILCO is seeking an exemption, the grant of

Sim 14-9

1 which requires a specific public interest determination.
2 As this Board has phrased the issue, the question boils
3 down to the merits of going to low-power now versus going
4 to low-power at a later date. That is the point that
5 Mr. Rolfe keeps saying. It is not a question of whether,
6 but it is a question of when.

7 Well, we think that the question of whether or
8 not the plant will even go to full power and whether you
9 are going to lose some costs of perhaps \$100 million is
10 germane to that very question of timing.

11 The gist of the testimony of the uncertainty and
12 the decommissioning costs, that there is no benefit at all
13 attendant to low-power itself and that any benefit from
14 going forward now as opposed to waiting is necessarily
15 dependent on going to full power.

16 What LILCO seems to be saying is that they
17 are entitled to a irrebuttable presumption that the engaging
18 in low-power testing now as opposed to waiting three months
19 will lead to a full-power license.

20 We suggest that that presumption is invalid
21 and that we are at least entitled to proffer evidence that
22 goes to let's consider the alternative.

23 There are pluses and minuses in every decision
24 that this Board has to make. They have given you the pluses.
25 If we go forward now we are going to safe fuel. If we

Sim 14-10

1 go forward now the ratepayers are going to be helped. Our
2 answer is well, maybe that is true, and we have some argument
3 with that as well.

4 But let's look at the flip side. If you go
5 forward now and don't save fuel, if you go forward now
6 and don't help the ratepayers, what is it going to cost
7 you? Who is going to bear that \$100 million? Is it the
8 shareholders? Is it the ratemakers? Is it the customers?
9 Is it the taxpayers? We don't know the answers to those
10 questions, but we suggest that those are germane issues that
11 this Board has to consider in deciding whether or not to
12 grant the application that is before the Board, which goes
13 to the question of timing. Why go now? Why not wait for
14 three months?

15 I know hypotheticals sometimes have a way
16 of backfiring, but let me see if I can simplify it.

17 If we exaggerate the facts that are before
18 this Board just for the sake of analysis and say we know
19 for a certainty that \$100 million is the entry fee to
20 low-power testing, that means that they would have to put
21 up \$100 million tomorrow in order to engage in low-power
22 testing.

23 Let's assume further that that \$100 million
24 is gone if they don't get a full-power license. Somebody
25 has to eat that \$100 million, as I mentioned earlier. The

Sim 14-11

1 ratepayers, the common stockholders, the preferred stock-
2 holders, the banks, we don't know who. But somebody does,
3 and that impact is a question of public interest.

4 So let's assume that that is a \$100 million
5 entry fee, that that is a forfeit. If you don't get the
6 full-power license you forfeit the \$100 million.

7 Let's assume further that we will know for
8 a certainty next week whether or not they are going to get
9 a commercial operating license, a full-power license. It
10 just defies logic and credibility to suggest that notwithstanding
11 that we are going to go ahead and give them the license. We
12 are going to gamble \$100 million of some public money because
13 we don't want to wait for a week.

14 Now I agree that that is an exaggerated example.
15 It is used only for the purpose of analysis. But analytically
16 that is the issue. Do we do it now or do we wait for
17 three months from now?

18 Once you arrive at the conclusion that as a
19 matter of logic you ought to consider that flip side, in
20 other words, what happens to that foregone \$100 million,
21 then the rest all is a matter of argument. Is it \$100
22 million? Is the \$100 million really gone or is it going
23 to be recaptured? Is it going to be a week? Is it going
24 to be nine months? Is it going to be 10 years?

25 All those go to the question of argument, they

Sim 14-12 1

2 go to the question of the weight of the evidence, but
3 analytically they are the same issue, \$100 million tomorrow
4 and wait for a week.

5 After hearing the evidence concerning now versus
6 three months from now and what happens and how are you going
7 to pay for decontamination and are you likely to end up
8 with a plant that has been contaminated, who is going to
9 bear the costs of having to clean up the plant if there
10 is no license, or if the license is delayed indefinitely,
11 if the full-power license is delayed indefinitely, this
12 Board might arrive at different conclusions that I would
13 or our experts would or indeed LILCO would.

14 But that again goes to the question of argument,
15 the sufficiency of the evidence and the weight of the
16 evidence. It really doesn't go to the probative nature
17 of the inquiry.

18 All we are asking in this testimony is for this
19 Board to consider the flip side.

20 A couple of technical matters. The issue
21 of what happens with respect to there being no full-power
22 license at page 43 doesn't cover the entire testimony.

23 Secondly, with respect to -- no.

24 That is it, Your Honor. I have nothing further.

25 JUDGE MILLER: Anything further?

MR. ROLFE: Yes, Judge Miller, a couple of

Sim 14-13

1 points.

2 MR. ZAHNLEUTER: Could I make a statement before
3 that? I think it would be the best order.

4 JUDGE MILLER: Sure.

5 MR. ZAHNLEUTER: I can't add anything to what
6 counsel for the County has stated so ably. So rather than
7 take up more time, I would say that the State opposes
8 LILCO's motion.

9 JUDGE MILLER: Thank you.

10 MR. ROLFE: Judge Miller, a couple of things
11 need to be taken into consideration here.

12 First of all, with respect to the hypothetical
13 that Mr. Sedky postulated, I believe that in somewhat
14 different terms that was precisely the issue and the
15 question which troubled Judge Brenner in 1983 when before
16 the TDI diesel generator problems with the crankshaft
17 arose he issued a decision and said in view of the serious
18 question, as he saw it, about the emergency planning,
19 should he go ahead and authorize a low-power license in
20 view of that uncertainty?

21

Sim end
Sue fols

22

23

24

25

#15-1-SueT¹

1 And he certified that question to the Commission,
2 and the Commission told him: Yes, you should. That was
3 the very question it answered. The Commission said: You
4 have got a right to low power testing. You don't worry about
5 the uncertainties attendant to full power testing.

6 Now, what the County leaves out of its analysis
7 is that they want to say you shouldn't engage in the low
8 power testing now because of all these uncertainties but
9 nowhere do they say that these uncertainties will be removed
10 when the TDI diesel generators are licensed, at which point,
11 by the Commission's very ruling, LILCO would have the right
12 to engage in low power testing anyway.

13 All this is, it hypothesizes that LILCO won't
14 get a license but it doesn't say that the problem is likely
15 to be any better. In fact, it just doesn't address the issue.
16 And the issue here is a timing issue. Should we do it now,
17 or should we do it later.

18 Even if it were relevant, under the Commission's
19 previous rulings, which it isn't, because the Commission
20 has already said, not only in response to Judge Brenner's
21 certified issue in 1983 which is the Commission's decision
22 at 17 NRC 1032, it was CLI 8317, but also this year on the
23 NEPA issue, the Commission said: You don't need an
24 environmental impact statement for low power testing because
25 you don't have to assume that low power testing is going to

#15-2-SueT

2 take place in a vacuum. You don't have to assume that you
3 are going to engage in low power testing and then the process
4 is going to grind to a halt and you won't get a full power
5 license. So, it's the second time the Commission addressed
6 the same issue and said: Don't consider the uncertainties
7 that you may not get a full power license. When you are
8 dealing with low power testing, in essence, you proceed
9 on the assumption that the plant will receive a full power
10 license.

11 So, first of all, the Commission has by two of
12 its decisions removed that issue from consideration; secondly,
13 even if that issue were somehow in consideration, this
14 testimony doesn't address it, because it doesn't -- all it
15 addresses is exemption now versus no full power license in
16 the future. It doesn't say anything about what happens when
17 you conduct low power testing when the TDIs are licensed
18 and, as Your Honor and the other Judges know I'm sure, that
19 hearings on the TDI diesel generator proceeding are scheduled
20 to begin September 5, which is about a month from today.

21 Now, with respect to the attempted distinction
22 between this testimony and the financial qualifications issue
23 which the Commission has reaffirmed recently is not to be
24 taken up in operating license proceedings, I think the
25 distinction simply isn't there. As Mr. Sedky pointed out
to the Board, the basis for Mr. Madan's and Mr. Dirmeier's

#15-3-SueT

1 view that operation of Shoreham at low power at this time
2 would not be in the public interest is, according to them,
3 that LILCO lacks the resources to assure that the activities
4 for which it seeks an exemption from otherwise applicable
5 NRC regulations can be conducted safely. That is the
6 financial qualifications issue.

7 The Commission's regulations in 50.57.A, when
8 they talked about financial qualifications, required a
9 finding that the Applicant is technically and financially
10 qualified to engage in the activities authorized by the
11 operating license in accordance with the regulations in
12 this chapter. And then they go on to exempt electric
13 utilities.

14 That's the very issue the Commission included
15 in that paragraph. In other words, do they have the
16 financial capability to operate the plant safely? That's
17 the very thing that Messrs. Madan and Dirmeier are address-
18 ing in this testimony. Does LILCO, in its present financial
19 condition, have the financial wherewithal to operate the
20 plant safely at low power testing?

21 Now, we can sit here and debate all day the
22 wisdom of whether in a pristine world with no regulations
23 that issue ought to be taken into account, but the fact is
24 that the Commission has foreclosed that inquiry, both in
25 its regulation and in its policy statement which was

#15-4-SueT

addressed in LILCO's motion.

2 Again, Your Honor, even if that issue were
3 proper for consideration, this testimony makes no attempt
4 to address that issue in the context of low power testing
5 now versus low power testing when the TDI diesel generators
6 are licensed. Indeed, their testimony at Page 23 says that
7 the primary difficulties being faced by LILCO -- and then
8 they tell you what they are -- remain important and signifi-
9 cant obstacles to LILCO's ability to continue to provide
10 safe and adequate service to the public during the anticipat-
11 ed period of early low power testing and likely well beyond.

12 So, they are not focusing in this testimony,
13 even if they were allowed by the Commission, they are not
14 focusing on the difference in timing. They are talking
15 about things that, in their opinion, are unlikely to
16 exist for a long time. They don't say anywhere in here
17 that by the time the TDI diesel generators are licensed
18 that those financial problems that they see will be solved
19 or in any way improved.

20 So, even if the inquiry were material under
21 the Commission's regulations, the testimony proffered would
22 not be relevant to that inquiry.

23 Thank you.

24 JUDGE MILLER: Staff.

25 MR. PERLIS: Your Honor, just briefly. I do

#15-5-SueT 1

2 believe that Mr. Sedky's real quarrel is with the Commission's
3 two earlier rulings, both of which are cited in our earlier
4 pleading.

5 We could stay and litigate for months the potential
6 for eventual issuance of a low power license, the full power
7 license here. If we did, no doubt the hearings here would
8 almost have to mirror the TDI hearings before Judge Brenner
9 and the emergency planning hearing before Judge Laurenson.

10 I think the Commission made it very clear in
11 its two rulings that for a low power license to issue that
12 sort of determination need not be made.

13 JUDGE MILLER: What sort of determination?

14 MR. PERLIS: As to the controversy surrounding
15 whether a full power license should issue. That's what
16 the full power license hearings are for.

17 JUDGE MILLER: I didn't hear you. Do you have
18 your thing turned on?

19 MR. PERLIS: Yes. I'm sorry.

20 JUDGE MILLER: Do you want to repeat that?

21 MR. PERLIS: If we were to get into a discussion
22 here of the potential for issuance of a full power license,
23 I --

24 JUDGE MILLER: For issuance of a full power?

25 MR. PERLIS: A full power license, I don't see
anyway this hearing could do anything other than mirror the

#15-6-SueT

1 hearing before Judge Brenner on TDIs and the hearing before
2 Judge Laurenson on emergency planning grounds.

3 JUDGE MILLER: That's just one matter involved
4 in the motion here and the counter-arguments. What about
5 the rest of the controversy?

6 MR. PERLIS: The only other thing I would add
7 on the financial qualifications is as it affects safety,
8 is to quote Rule 403 of the Federal Rules of Evidence
9 which states that: Although relevant evidence may be
10 excluded if its probative value is substantially outweighed
11 by the danger of unfair prejudice, confusion of the issues,
12 misleading the jury or by considerations of undue delay,
13 waste of time, or needless presentation of cumulative
14 evidence.

15 As I've indicated earlier, regardless of what
16 the financial condition of the utility is, these witnesses
17 have absolutely nothing to say about that effect on safe
18 operation at low power.

19 They are not qualified to make any statements
20 and indeed their testimony addresses that matter only in a
21 cursory way. I don't think we need to spend days or weeks
22 litigating the financial condition of the utility if it
23 just isn't relevant to any issue before the Board.

24 And without that nexus there is no real relevance.
25 I have nothing further to say.

#15-7-SueT 1

JUDGE MILLER: State? Have you had your turn
2 yet?

3 MR. ZAHNLEUTER: I have nothing further, Your
4 Honor.

5 JUDGE MILLER: County.

6 MR. SEDKY: I have just a brief reply, Judge
7 Miller. Let me address the last point first.

8 First of all, there is no need here to decide
9 whether or when full power operation is going to commence.
10 That's a red herring completely. The only thing we are
11 talking about is whether it's legitimate for this Board
12 to consider the uncertainty. That's all.

13 Whether the Board -- it's legitimate for this
14 Board to say: Well, gee, let's look at what happens if
15 it doesn't. I'm not saying that you have got to make a
16 finding that it is going to happen or that it isn't going
17 to happen or when it's going to happen. We are just saying:
18 Look, there are some costs that ought to be looked at.
19 In the event, however unlikely or likely that it is, that
20 there is no full power license shouldn't we consider the
21 downside?

22 That's all we are talking about. We also are
23 not talking about litigating the financial condition of
24 LILCO over -- the financial condition of LILCO. We are
25 not talking about litigating the financial condition of

#15-8-SueT1

LILCO over an extended period of time.

2 I don't believe the facts are in dispute. The
3 record that is already in here, these are public documents
4 of the Company, and I don't believe that Mr. Rolfe is going
5 to say that they were lying to the SEC when they made the
6 statements they made in the 10-K or the 10-Q or the 8-K.
7 So, I don't think the facts are going to be in dispute
8 as to what the financial condition is.

9 Now, let me go back to the question of what Judge
10 Brenner did or didn't do. First of all, what was before
11 Judge Brenner to the best of my knowledge didn't involve an
12 exemption that required a finding of exigent circumstances
13 and of public interest. This application does.

14 You are required to make a particular public
15 interest. Why is it that they should go now instead of
16 wait for the diesels to be resolved? And you've got to
17 find exigent circumstances, and you've got to find the
18 public interest.

19 So, it's just immaterial that some other Board,
20 in deciding some issue, some other issue, didn't require
21 those determinations, made some other adverse finding.

22 Mr. Rolfe says all these uncertainties are going
23 to be resolved after TDI. Well, after TDI you won't need
24 an exemption. I mean, it's sort of a bootstrap to be
25 saying: Once we get the TDI diesels resolved, we will be

#15-9-SueT1

1 entitled to low power. Well, that seems to be what the
2 Commission has said so far.

3 But that sort of is a tautology. If we didn't
4 have a problem, we wouldn't have a problem. So, I just
5 don't think the point that uncertainties will be removed
6 after the TDI diesels are resolved says anything other
7 than the uncertainties will be removed.

8 That's all I have.

9 (The Board members are conferring.)

10 JUDGE MILLER: The Board has considered the
11 presentations of the parties, including the previous
12 filings by several, if not all of you, and the arguments
13 today. And the Board believes that it should, and will,
14 adhere to its tentative conclusion as stated this morning.

15 We believe that the functions, the issues pre-
16 sented by the Commission to this Board, are relatively
17 limited in nature when compared with the multiplicity of
18 issues that obtain to the operating licensing of a nuclear
19 power plant. We simply recognize that there is a plant at
20 Shoreham, to a certain degree of completion, that there
21 has been a partial initial decision after hearings covering
22 a substantial period of time that we are not concerned with
23 nor involved with nor do we express any views on those
24 matters.

25 Simply taking the situation as it is now, it is

#15-10-SueT

2 our function, we believe, as directed by the Commission to
3 consider whether or not an exemption should be granted as
4 requested by LILCO with regard to the low power license
5 operations.

6 We would agree that if there were anything in
7 this phase or group of issues which bore upon safety that
8 it would be relevant and material. We have not seen, either
9 from examination of the proffered testimony or from the
10 arguments of various counsel involved, that there is any
11 such connection. Those are two different facts or groups
12 of facts. But we haven't seen anything that influences one
13 bearing upon the other.

14 In that event, we do not believe that we are
15 warranted, nor that we should, expend the judicial time,
16 energy and money of the parties to go into issues which are
17 not material, which are not probative, as lawyers use the
18 term, which are not of significance in decisionmaking.

19 We do not believe, therefore, that going into
20 anything further than the present record shows as to
21 financial condition is warranted nor in the scope of this
22 proceeding. We think also that such matters as service
23 to customers, maintenance, resources, uncertainties about
24 full power, decommissioning and so forth are matters which
25 are, in one form or another, considered or being considered
by other boards and by the Commission itself.

#15-11-Sue

2 We believe also that the proffered testimony does
3 not bear upon issues which are relevant or material to
4 this proceeding. We do not think that these or any,
5 probably any, expert is an expert on public interest.
6 Certainly experts may present factual testimony and opinion
7 evidence where appropriate on elements or matters which
8 would be subsumed by this general term, public interest.
9 But we do not believe that in the form in which it is
10 presented here, nor in the qualifications of the witnesses,
11 that this testimony should be admitted.

12 We will say further that when it comes to making
13 determinations on public interest and the other matters
14 that are contained in the Commission's Order, the ultimate
15 trier of fact is either this Board or the Appeal Board or
16 the Commission, or any or all; it is not for any particular
17 witness. This is a well known rule of lawyers that the
18 ultimate issues are not the matters of testimony by
19 experts or others, but of course the elements that go to
20 make it up are or could be. So, I'm sure you understand
21 what I mean by that.

22 We, therefore, will adhere to the preliminary
23 conclusions that we had announced to you this morning to
24 guide you to some extent in the presentation of the evidence
25 and testimony of witnesses in this proceeding. So we will,
therefore, rule that the proffered testimony, and if there

#15-12-SueT

2 are exhibits that are related to it, the ruling would be
3 the same on the matters which go into the financial
4 condition, resources and things that are discussed in
5 the testimony of the witnesses from Page 23 forward.

6 So, the motion will be granted to that extent.

7 MR. ROLFE: Judge Miller, I believe it's from
8 the middle of Page 21 forward.

9 JUDGE MILLER: Let me check that. Yes, as a
10 matter of fact it is. It is the latter portion of Page 21
11 under B, other economic effects of granting the exception,
12 starting with Q and going off of Page 21 to the conclusion
13 of the proffered written direct testimony which concludes,
14 I believe, on Page 47, will be denied admissibility. And
15 the same ruling will apply to any exhibits, if there be
16 any, which are directed towards or bear upon that phase of
17 this testimony.

18 Anything further?

19 MR. ROLFE: Your Honor, there is one further
20 thing. In the cross-examination of Messrs. Madan and
21 Dirmeier with respect to the first phase of their testimony
22 which has been admitted by the Board, LILCO identified
23 three exhibits, LP-11, LP-12 and LP-13.

24 Since, as I understand it, there is no rebuttal
25 case in these proceedings as a matter of course, I would
move that those exhibits be admitted into the record at this

#15-13-SueT

time.

2

JUDGE MILLER: What is 13?

3

MR. ROLFE: 13 was that memorandum concerning the expenses.

4

5

JUDGE MILLER: All right. Let's hear from counsel. Any objections?

6

7

MR. SEDKY: Your Honor, we don't have any objections to 11 and 12. But we do object to 13. 13 is a compilation of information that we specifically asked for further information on, elucidation on, and were denied it. I think it is, in effect, surprise testimony and would necessitate some motion I suppose on our part to reopen and get some further information as to where they get these numbers, what they mean. Is this really just a plug that they used to cover up the discrepancy identified by our experts?

9

10

11

12

13

14

15

16

17

I just don't know. And I think it opens up a Pandora's box of issues. If they want them opened, we are prepared to address them.

18

19

20

But we object to its introduction.

21

JUDGE MILLER: State of New York.

end #15 22

Joe flws

23

24

25

1 MR. ZAHNLEUTER: The State has no objection
2 to LP-12 or 11, provided the State is given a copy of those
3 documents in the near future. I note that we didn't receive
4 a copy.

5 Now, with respect to LP-13, I observe that
6 it is basically a letter with an attachment, which involves
7 none of the witnesses that are on this panel, so I don't think
8 the proper foundation has been laid to introduce this exhibit
9 with connection to these witnesses on this panel.

10 MR. SEDKY: Your Honor, may I raise just a
11 housekeeping matter, too? I am sorry to take it out of
12 turn. But in light of 11 and 12, that is LILCO 11 and 12,
13 we had kept out Attachment 3, which is the earlier computer
14 run. It seems to me that if the computer runs are going to
15 come in, they all ought to come in so that whatever argument
16 anybody wants to make, at least the documents are all there.

17 JUDGE MILLER: Probably true.

18 MR. SEDKY: That would be Attachment 3, Your Honor.
19 We will have to provide them a copy. I think we have them
20 in our office out here.

21 JUDGE MILLER: Are those the printouts?

22 MR. SEDKY: They are the computer printouts that
23 were initially furnished.

24 JUDGE MILLER: Furnished by LILCO.

25 MR. SEDKY: By LILCO to us.

1 JUDGE MILLER: Pursuant to discovery?

2 MR. SEDKY: Correct, Your Honor.

3 JUDGE MILLER: Yes. I think those should be
4 in. We will allow you to produce the copies, have it
5 numbered, and it will be admitted when proffered.

6 MR. SEDKY: In that case, they will be designated
7 as Suffolk County LP---

8 JUDGE MILLER: You can give it at that time
9 the designation for the record.

10 MR. SEDKY: Very well, Judge Miller.

11 JUDGE MILLER: Does the Staff have --

12 MR. PERLIS: We have no objection to the
13 admissibility of either LILCO Exhibit LP-11 or LP-12, or
14 whatever number the County is attaching to Attachment 3.

15 As to LILCO LP-13, it appears that the County's
16 sole objection to this document is nature of surprise, and
17 when this document was delivered to the County. The Staff
18 has no knowledge of those events, and therefore we wouldn't
19 take a position either way on that document.

20 JUDGE MILLER: LILCO?

21 MR. ROLFE: Judge Miller, since no one has any
22 objections to 11 and 12, obviously I will not address those,
23 and LILCO has no objection to the County's desire to put in
24 the Attachment 3.

25 As to LP-13, which is the memorandum, I would simply

1 note that first of all it is not a surprise document. It
2 is a document which LILCO gave to Suffolk County in response
3 to Suffolk County's specific inquiry after discovery had
4 concluded, at a time which LILCO had no obligation to provide
5 further discovery, but it did in an effort to aid Suffolk
6 County in its understanding of the testimony.

7 Suffolk County had that well before this hearing.
8 So, it is not a surprise document in the sense that it was
9 given to them the first time today.

10 Secondly, it was as I recall, specifically first
11 mentioned on cross examination by Mr. Dirmeier, who brought
12 it up. This was the same problem we got into with some of
13 the exhibits that were mentioned on cross examination of
14 Mr. Nozzolillo, and Your Honor ruled that those exhibits
15 ought to come in if they were mentioned in the cross
16 examination and used to test his assumptions and his
17 conclusions.

18 This is the identical principle. It was the
19 same way --

20 JUDGE MILLER: Did I say come in, or did I say
21 marked for identification, so we know what we are talking
22 about on the record. I thought it was the latter.

23 MR. ROLFE: You subsequently admitted them,
24 Judge Miller.

25 JUDGE MILLER: Step 2.

1 MR. ROLFE: Yes, sir. But I think the same
2 principle would apply here. Again, recall that the
3 context in which this was raised was that Messrs. Dirmeier
4 and Madan said they had no independent knowledge of the
5 input that went into these computer runs, so they were
6 looking at LILCO's runs, and again forgetting the question
7 of which runs they were, in fact, looking at, and they
8 found a mismatch, and they assumed that the mismatch was
9 a mistake rather than assuming that there could have been
10 some differential in expenses.

11 And they mentioned that LILCO had given them
12 a document which, according to LILCO's figures, show that
13 there was, indeed, a differential in expenses, so the
14 document is clearly relevant to their testimony.

15 Mr. Dirmeir first mentioned it, and I think
16 to be consistent, Your Honor, and in accordance with the
17 general rules of evidence, the document ought to be
18 admitted?

19 JUDGE MILLER: Well, we think we will not
20 admit the document. We think it has been marked for
21 identification. It is part of the record, so anyone who
22 feels he is injured by it, we have it available. However,
23 let us point out that this document was apparently produced,
24 according to the testimony, some time after the close of
25 discovery, and apparently pursuant to informal discovery which

1 we have always encouraged, but by which we don't intend to
2 benefit or penalize any party.

3 If indeed the matters contained herein are
4 significant, it would be wise for you to put them in
5 affirmatively in your own case, in rebuttal.

6 If, on the other hand, they are not relevant to
7 something we probably wouldn't admit them, but you are
8 welcomed to try and I am expressing no views one way or
9 the other.

10 As far, however, as the offer at this time
11 is concerned -- let's see, this is LILCO's offer of
12 Exhibit 13?

13 MR. ROLFE: Yes, Judge Miller.

14 JUDGE MILLER: Well, we will give you an
15 opportunity. We don't want you to get mixed up in trying
16 to offer an exhibit in somebody else's case, but we can tell
17 you right now what the ruling will be unless there be
18 something more, some showing, some foundation laid
19 affirmatively.

20 The present state of the record, the witnesses
21 have testified. The transcript will show what their
22 testimony is. It will show the situation as they understood
23 it for whatever purpose that may be, in ultimately evaluating
24 and laying the testimony of all witnesses, but we believe
25 that the record would be better if we don't get into

1 extraneous inquiries which would be, perhaps, entailed
2 by the kind of exchange that went on with these witnesses.

3 Now, if there is something that you can show
4 affirmatively under your own power, so to speak, and with
5 the proper foundation for material and relevant purpose,
6 okay. You can try it. So, we are without prejudice in
7 an effort procedurally.

8 We are ruling at this time that it will not
9 be received.

10 MR. ROLFE: Judge Miller, then do I understand
11 that if LILCO believes it necessary --

12 JUDGE MILLER: Don't bargain with me.

13 MR. ROLFE: No, sir, I am not bargaining. I am
14 just asking if LILCO believes that it is necessary, and I
15 have to make a determination --

16 JUDGE MILLER: We will give you an opportunity
17 --

18 MR. ROLFE: You will give us the opportunity
19 to put on a rebuttal witness.

20 JUDGE MILLER: Or the consideration of appropriate
21 rebuttal, as we will all parties.

22 MR. ROLFE: Thank you, sir.

23 JUDGE MILLER: Okay.

24 MR. SEDKY: I believe that concludes the testimony
25 of these witnesses, Judge Miller. May they be excused?

1 JUDGE MILLER: Yes, they may be excused.
2 Thank you gentlemen. I hope we didn't inconvenience you.
3 I know you had other plans. Proceed.

4 (Panel stands aside.)

5 MS. LETSCHE : Judge Miller, Suffolk County
6 calls as its next witness panel Dale G. Bridenbaugh and
7 Richard B. Hubbard. Mr. Hubbard is getting his papers.
8 Whereupon,

9 DALE G. BRIDENBAUGH

10 - and -

11 RICHARD B. HUBBARD,

12 were called as witnesses on behalf of Suffolk County and,
13 having been first duly sworn, were examined and testified
14 as follows:

15 DIRECT EXAMINATION

16 BY MS. LETSCHE:

17 Q Gentlemen, would you just identify yourselves
18 for the record, please?

19 A My name is Dale G. Bridenbaugh.

20 A My name is Richard D. Hubbard.

21 Q And would you state your professional affiliations,
22 please?

23 A (Witness Bridenbaugh) Yes. I am the President
24 of, and the consultant with, MHB Technical Associates, whose
25 offices are located at 1723 Hamilton Avenue, San Jose, Cali-
fornia.

1 A (Witness Hubbard) I am a principal in MHB
2 Technical Associates, with also offices in San Jose,
3 California.

4 Q Gentlemen, do you have before you a document
5 entitled, Direct Testimony of Dale G. Bridenbaugh and Richard
6 B. Hubbard on Behalf of Suffolk County, which consists of
7 35 pages, and two attachments, the first of which is the
8 Professional Qualifications of Dale G. Bridenbaugh, and the
9 second of which is Professional Qualifications of Richard B.
10 Hubbard?

11 A (Witness Hubbard) Yes.

12 A (Witness Bridenbaugh) Yes.

13 Q And is that testimony that you gentlemen
14 prepared?

15 A (Witness Bridenbaugh) Yes, it is.

16 Q Do you have any changes or corrections to make
17 in that testimony? Let me note for the record that Mr.
18 Birkenheier has distributed, I believe, to the Board and the
19 parties, a list of the -- I believe it is four corrections
20 that the gentlemen are about to state for purposes of the
21 record.

22 Mr. Bridenbaugh?

23 A Yes. We have identified four corrections to the
24 testimony, and those are listed on the Errata Sheet that I
25 believe has been passed around.

1 Q Would you just state them so the Court Reporter
2 can get them down, please?

3 A Yes, I will The first one is found on page 9,
4 in Footnote 5, Line 7 of the footnote, and the change there
5 is a change of the wording from, 'relatively simple,' to,
6 'standard.'

7 The second change is on page 14, Line 18. The
8 change there would be to delete the words, 'shop survey,'
9 and insert the words, 'manual review.'

10 The third change is on page 23, Line 15. There
11 is a simple misspelling of the plural of utilities.

12 And the fourth change is on page 24, line 17,
13 the word, 'nonconformance' should be plural, 'nonconformances.'

14 Q Now, gentlemen, did your testimony as prefiled
15 contain in addition to the two attachments we have mentioned,
16 eight other attachments which were identified as Attachments
17 3 through 10?

18 A Yes, it did.

19 Q Let me state for the record that Attachments 3
20 through 10 to the prefiled testimony of Messrs. Bridenbaugh
21 and Hubbard have been premarked as Suffolk County Exhibits,
22 and Mr. Brikenheier is going to pass out a package containing
23 those exhibits, and I will identify them for the record, as
24 soon as he finishes passing them out.

25 What was marked as Attachment 3 to the prefiled

1 testimony has been marked as Suffolk County Exhibit LP-29
2 for identification. It consists of a letter dated January
3 15, 1981, from D. D. Terry, Lead Startup Engineer, to J. H.
4 Taylor.

5 What was marked and is referred to in the
6 testimony as Attachment 4, has been marked as Suffolk
7 County Exhibit LP-30 for identification. It is a document
8 entitled, Diesel Generator.

9 I should ask, Judge Miller, is it your preference
10 that I go through the entire group of them, or would you --

11 JUDGE MILLER: I think it would be more
12 convenient for you.

13 MS. LETSCHE: That is what I thought. I just
14 wanted to make sure that was in accord with your wishes.

15 Let's see. What was marked as Attachment 5,
16 and is referred to that way in the testimony, has been
17 marked as Suffolk County Exhibit LP-31. It consists of
18 a document dated July 12, 1983. On the letterhead, Energy
19 Consultants, Inc. Subject: Witness and Evaluation of
20 Emergency Diesel Generator Testing at Shoreham Nuclear
21 Power Station for Nuclear Regulatory Commission, Region I
22 Staff, Final Report of NRC Contract No. 05-82-249 Parameter
23 Purchase Order No. NRC-IE-82-83, Task 38.

24 What was marked as Attachment 6, and referred
25 to as Attachment 6 in the testimony, has been marked as

1 Suffolk County Exhibit LP-32 for identification.

2 That document is a letter dated December 2,
3 1983, to Robert E. Smith, Esquire, from Edward M. Barrett.

4 What was identified as Attachment 7, and
5 referred to as Attachment 7 in the testimony, has been marked
6 as Suffolk County Exhibit LP-33. That consists of an
7 October 21, 1983 Memorandum for Chairman Palladino,
8 Commissioner Gilinsky, Commissioner Roberts, Commissioner
9 Asselstine, and Commissioner Bernthal, from Darrell G.
10 Eisenhut, Director, Division of Licensing, subject: New
11 Information Concerning Transamerica Delaval (TDI) Emergency
12 Diesel Generators, Board Notification 83-160.

13 I will note for the record that what was
14 identified as Attachment 8 in the prefiled testimony is
15 not being offered as an exhibit at this time, because the
16 substance of that document was contained in what has already
17 been marked and admitted into evidence as Suffolk County
18 Exhibit LP-18.

19 That was admitted during the cross examination
20 of Mr. McCaffrey.

21 What was identified as Attachment 9, and referred
22 to as Attachment 9 in the testimony of Messrs. Bridenbaugh
23 and Hubbard, has been marked as Suffolk County Exhibit
24 LP-34 for identification.

25 That consists of a document entitled Vendor
Inspection History, attached to which is a summary entitled,

1 Transamerica Delaval Inspection History, Vendor Program
2 Branch Findings 1979 to 1983.

3 Finally, what was referred to as Attachment 10
4 in the prefiled testimony has been marked as Suffolk County
5 Exhibit LP-35. That consists of a portion of the transcript
6 of a meeting on TDI diesel generators, held on January 26,
7 1984.

8 BY MS. LETSCHE : (Continuing)

9 Q Gentlemen, are the documents which I have just
10 identified, which were attachments to your prefiled
11 testimony, and have been marked as I indicated, as
12 Suffolk County exhibits for identification in this proceeding,
13 documents that you relied upon and refer to in your prefiled
14 testimony?

15 A (Witness Bridenbaugh) Yes.

16 MS. LETSCHE: Judge Miller, I request that
17 the documents be so marked.

18 JUDGE MILLER: They may be so marked.

19 XXX INDEX

20 (The above referred to documents
21 will be marked Suffolk County
22 Exhibits LP-29 through 35 for
23 identification.)

24 BY MS. LETSCHE: (Continuing)

25 Q I can't remember, gentlemen, if I asked you this
or not, but is the testimony -- your prefiled testimony,

1 along with the attachments that are referred to therein,
2 true and correct to the best of your knowledge.

3 A (Witness Bridenbaugh) Yes.

4 A (Witness Hubbard) Yes.

5 Q Mr. Bridenbaugh, would you please summarize
6 for the Board your professional qualifications?

7 A (Witness Bridenbaugh) Yes, I will. Starting
8 with my formal education and training, I am a graduate
9 mechanical engineer, having received a bachelor of science
10 in mechanical engineering in 1953.

11 Subsequently, I have also been licensed as a
12 professional nuclear engineer in the State of California.

13 Starting back at the beginning, which is
14 perhaps the easiest way to describe this, in 1953, after
15 getting out of school, I began work for the General Electric
16 Company, and during the period of 1953 through 1956, I had
17 assignments in several different locations for General
18 Electric in manufacturing, design, and acceptance testing
19 in divisions involving the design and production of aircraft
20 gas turbines, and the locomotive division in Erie,
21 Pennsylvania, which locomotives utilized diesel drives and
22 gas turbine drives, and in the large steam turbine generator
23 department, in Schenectady, New York.

End 16. 24
Mary fols.

25

Sim 17-1
1

2 Also during that period of time I had two
3 years off for Army service where I was an instructor of
4 maintenance procedures for the Ordinance Corps.

5 My experience during the years of 1956 through
6 1963, when I returned to the General Electric Company after
7 my Army service, were primarily as a field engineer or
8 a field engineering supervisor working in the Installation
9 and Service Engineering Department of the General Electric
10 Company where my responsibilities included the supervision
11 of installation, operational testing, maintenance, startup
12 testing and troubleshooting, including the investigation
13 of equipment failures in central station power plants and
14 industrial plants.

15 And in that period of time I worked primarily
16 on steam turbines and generators, but also on gas turbines.
17 I worked on a combined cycle steam turbine/gas turbine
18 plant, and I worked in industrial plants on mechanical
19 drives of pumps, compressors, papermill drives and that
20 sort of equipment.

21 My responsibilities during that period of
22 time included operator training, test procedure development
23 and the range of my experience was from in plants, nuclear
24 plants and fossile plants from Italy to the Phillippine
25 Islands and in approximately 10 or 12 States in the United
States.

Sim 17-2

1 During that time I was also responsible for
2 a contract business for General Electric wherein we
3 installed under contract to utilities steam turbines and
4 also performed contract maintenance in both power plants
5 and industrial plants.

6 Starting in 1963 and through 1976 I was working
7 for the General Electric Nuclear Energy Division in San
8 Jose, California, and my responsibilities during that period
9 of time were as Manager of Warranty Service, Manager of
10 Product Service and Manager of Performance Evaluation and
11 improvement. And in those assignments I headed up the
12 GE Nuclear Division Warranty and Service Group providing
13 the operating service to utilities for all commercial
14 service nuclear plants that were designed by the General
15 Electric Company.

16 I also in that responsibility had project
17 management for contract completion at nuclear plants,
18 many of which were turnkey plants and included all aspects
19 of the plant, essentially from the front gate to the
20 switchyard.

21 During that time I established a service
22 information system to convey to utilities ---

23 MR. EARLEY: Judge Miller, excuse me for
24 interrupting, but I am trying to find this lengthy
25 description. He was asked to summarize his professional

Sim 17-3

1 qualifications and I can't seem to find the material that
2 he is discussing anywhere in the materials we have been
3 given.

4 There is a resume, but it appears that the
5 information that he is giving goes far beyond anything that
6 is included there.

7 JUDGE MILLER: Where did you find the resume?

8 MS. LETSCHE: Mr. Bridenbaugh's resume, Judge
9 Miller, is Attachment 1 to the testimony. It is entitled
10 "Professional Qualifications of Dale G. Bridenbaugh."

11 JUDGE MILLER: Right. What is your problem?
12 You don't have that?

13 MR. EARLEY: I have the resume. The information
14 that we are getting now goes far beyond what is included
15 in the resume.

16 JUDGE MILLER: Why do you find that objectionable?

17 MR. EARLEY: I just think if the County had
18 wanted to put forward the witness' professional qualifications
19 they should have been included in the prefiled testimony.

20 JUDGE MILLER: Well, they are not limited to
21 it. The prefiled testimony doesn't necessarily encompass
22 qualifications which could be embroidered or elaborated upon
23 and so forth, and perhaps the scope of testimony issues
24 be addressed changed.

25 We never have, in other words, said that a

Sim 17-4

1 prefilled resume is limiting. In fact, usually people want
2 to know as fully as possible about the experience of their
3 adversaries.

4 So you may proceed.

5 WITNESS BRIDENBAUGH: Completing my experience
6 and responsibilities at the GE Nuclear Division from '63
7 to 1976, my organization was also responsible for tracking
8 the reliability of nuclear plants in the United States and
9 taking that information and developing a performance improve-
10 ment plan which the company was using to try and improve
11 the reliability of nuclear equipment.

12 During that time I also headed up as a Project
13 Manager a special pipe crack response group that was necessary
14 to be formed in 1974 and '75 in response to the intergranular
15 stress corrosion cracking at boiling water reactors in
16 the United States.

17 And in 1975 I was the Project Manager for
18 the safety reassessment of the MARK I containment system used
19 with GE boiling water reactors which involved some 24 units
20 in the United States.

21 I left the General Electric Company in 1976, and
22 since then have been involved with my present firm, which
23 is MHB Technical Associates. In that eight-year period
24 I have been involved almost continuously in the safety
25 evaluations of nuclear plants, involved with the licensing

Sim 17-5

1 of them before the NRC and I have been involved in a number
2 of rate case issues before public service commissions in
3 six to seven States. And my firm has also performed nuclear
4 safety assessments for the Swedish Government, specifically
5 the equivalent of the NRC in Sweden.

6 We have performed a safety study for the Sandia
7 Corporation who is doing work for the Department of Energy
8 in the United States, and I have served as a consultant
9 to the NRC in evaluating the safety research program.

10 I have been involved in the assessment of
11 Shoreham safety and cost issues since 1977 to the present
12 time.

13 MS. LETSCHE: Thank you.

14 Mr. Hubbard, would you summarize your profes-
15 sional qualifications, please.

16 WITNESS HUBEARD: Yes. Starting with page 4
17 of my prefiled resume, I have a bachelor of science in
18 electrical engineering from the University of Arizona and
19 an MBA from Santa Clara University.

20 I am a registered quality engineer in the
21 State of California. I have been a member since approximately
22 1975 of the Institute of Electrical and Electronics Engineers
23 Power Engineering Society's QA Standards Committee, and
24 I am one of the co-authors of three standrds regarding
25 quality assurance for nuclear power plants.

Sim 17-6

1 One of them is IEEE-467 is the QA program
2 requirements for design and manufacture of Class IE equip-
3 ment and also electrical equipment for nuclear stations.

4 Likewise, I am one of the co-authors of IEEE-336
5 which is the standard for the installation, inspection
6 and testing requirements for Class IE instrumentation as
7 well as electric equipment at nuclear stations.

8 And I am currently a member of the IEEE committee
9 who is developing the standard for replacement parts for
10 electrical equipment and Class IE equipment. That is our
11 current task for the last couple of years.

12 In terms of the assignments I have had, my
13 career basically falls into two parts.

14 I spent 16 years with the General Electric
15 Company with the first year of that on GE's rotational
16 training program. Then I spent three years as an applica-
17 tion engineer at the Switchgear Department of General
18 Electric in Philadelphia, and there I mainly worked on
19 very large power systems, rectifiers and inverters.

20 I was Project Engineer on a very large
21 rectifier system where we would start with 161 KV through
22 the various switchgear and transformers down to eventually
23 700 volts DC at around 160,000 amperes. And I specified
24 all the equipment and did all the power system relaying
25 and settings and so forth for that.

Sim 17-7

1 I also during that time worked on silicon
2 controlled rectifiers for a number of industrial applications
3 and went out to those installations to make sure that they
4 would work.

5 In 1964 I joined the General Electric Nuclear
6 Division, and one year thereafter I was made Manager
7 of Proposal Engineering. As Manger of Proposal Engineering
8 I had two to nine engineers working for me. The major
9 responsibility was conducting technical review of bid
10 specifications for nuclear plants and identifying the
11 material that might be required by General Electric and
12 also identifying what exceptions would need to be taken
13 to the bid specifications, if any, in the area of technical
14 requirements.

15 Then the third major responsibility was to
16 go visit the customers and explain the technical offering
17 for GE as it related to electrical equipment and
18 instrumentation.

19 In 1969, partially as a result of GE's turnkey
20 experience, I was taken out of the job in proposal
21 engineering and put on a special assignment to the General
22 Manager of the Nuclear Division to look into moving work
23 that was being done in the field back to the factory at
24 GE. And the concept we had was something I had worked
25 on before in steel mills called the power generation control

Sim 17-8

1 complex where you prefabricated the entire control room and
2 the factory and would test it.

3 So I headed a group of ten engineers and met
4 with architect/engineers in utilities around the country
5 to see if that would be a feasible idea. And based on that,
6 it was decided to into that business and there have been
7 a number of those sold since then called the power generation
8 control complex.

9 Following that assignment, I was made Manager
10 of Application Engineering for again the instrumentation
11 and electrical equipment. And there my responsibilities
12 were for managing the project engineers who had the day-to-day
13 interface with the architect/engineers and utilities in
14 the electrical area.

15 In that position I had 17 engineers reporting
16 to. One of those 17 engineers was the Project Engineer
17 for the Shoreham plant and he was responsible for the
18 day-to-day workings with Stone and Webster and LILCO
19 defining the instrumentation and control on electrical
20 equipment for Shoreham.

21 Following that in 1971 I became Manager of
22 Quality Assurance in the manufacturing part of GE. I had
23 approximately 150 people reporting to me in that position.
24 And in that position I developed the quality system for
25 the manufacturing in San Jose that received NRC certification

Sim 17-9

1 in 1975 as the program in accordance with Appendix B.

2 I also was responsible for a large machining
3 area, a welding area and things of that sort. So I was
4 responsible for GE's ASME code stamp for both N and NPT
5 work which was a stamp we had originally received at General
6 Electric in 1969.

7 I was responsible for the reaudits in 1972 and
8 1975 by the ASME.

9 In 1975 I was moved up one level in management
10 in terms of quality assurance. I still had the same function
11 but was one of four managers of a department of 1,000 people.
12 I had at that point in time about 200 people working for
13 me in the area of quality assurance.

14 One other thing in terms of quality assurance.
15 I had many audits by customers. It was a normal sort of
16 thing. I have about 70 audits a year, audits by the NRC
17 and also audits by the ASME. I had a resident inspector
18 from the State of California in our facility who was doing
19 the ASME code work, and I was routinely asked to interpret
20 licensing requirements for these sorts of people.

21 After leaving GE in 1976, I participated in
22 starting MHB. And during the time period for the last
23 eight years have been involved in both safety hearings,
24 studies of safety and economics and also in various rate-
25 making proceedings.

Sim 17-10

1 I have listed 46 publications starting with
2 page 5. Two of those were while I was with General Electric,
3 one on in-core power range neutron monitoring systems which
4 appeared in Power Magazine and another on quality assurance,
5 which appeared in Power Magazine while I was with General
6 Electric. And the testimonies and studies from there on
7 were done while I was with MHB.

8 MS. LETSCHE: This panel is available for
9 voir dire.

10 JUDGE MILLER: Voir dire examination.

11 MR. EARLEY: Judge Miller, if I may just
12 ask a scheduling matter as to how long the Board intends
13 to go. LILCO has given the Board motions to strike this
14 testimony which encompasses all of the testimony.

15 I don't know whether the Board intends to take
16 that up now or take it up later as you had been with some
17 of the others. Now I am not sure we are going to finish
18 with these witnesses today. If we take it up now, if it
19 is successful, they may not have to make the trip back
20 to testify if the testimony is struck. But I am willing
21 to do whatever the Board desires.

22 JUDGE MILLER: Did you file a motion to exclude
23 the testimony?

24 MR. EARLEY: Yes, Judge Miller. It was in the
25 package that was given to you on Monday.

Sim 17-11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE MILLER: Of this week?

MR. EARLEY: Yes, Judge.

JUDGE MILLER: Has the staff filed anything

MR. PERLIS: No, Your Honor.

JUDGE MILLER: What is the staff's position, do you know, on this motion?

MR. PERLIS: The staff's position is that there is a difference between a good faith effort and the type of prudence that is the subject of this testimony.

JUDGE MILLER: You don't need to go into the merits of it. I am just trying to find out where you line up on it.

MR. PERLIS: We would support the motion to strike.

JUDGE MILLER: You would support the motion to strike.

MR. PERLIS: Yes.

JUDGE MILLER: But you don't have any papers that you have filed?

MR. PERLIS: We did not file anything, that is correct.

JUDGE MILLER: State, have you got any filings on this that you know of?

MR. ZAHNLEUTER: To my knowledge, there are no filings, but we do oppose the motion.

Sim 17-12 1

JUDGE MILLER: All right.

2

Has anything been filed by the County?

3

4

MS. LETSCHE: No, Judge Miller. We intended to respond orally to this motion as we understood was the Board's practice.

5

6

JUDGE MILLER: Yes. Okay.

7

8

Well, we are going to have to consider the motion on the grounds, and we are probably going to recess in about 10 or 15 minutes.

9

10

11

MS. LETSCHE: Well, what might be the best way to go, one of the grounds for the motion is a lack of qualification. Since these witnesses are now ---

12

13

14

JUDGE MILLER: Oh, yes. All right. In that event, we should have the voir dire now then that bears upon that portion of the motion.

15

16

17

MS. LETSCHE: I would think that would make sense.

18

19

JUDGE MILLER: I agree.

20

21

MR. EARLEY: That was a separate and independent grounds. There were two independent grounds, but I will proceed with voir dire.

22

23

24

25

JUDGE MILLER: Whatever it is, go ahead and voir dire, and if you do have any grounds in your motion bearing upon qualifications of any kind, I think voir dire would be the time to complete the record on that. I agree

Sim 17-13

1 with counsel.

2 MR. EARLEY: Yes, Judge.

3 VOIR DIRE

INDEX

4 BY MR. EARLEY:

5 Q Gentlemen, have either of you ever designed
6 or participated in the design of a diesel engine?

7 A (Witness Hubbard) I have not.

8 A (Witness Bridenbaugh) No.

9 Q Have either of you ever been responsible for
10 the installation of a diesel engine?

11 A (Witness Hubbard) I have not.

12 A (Witness Bridenbaugh) Not directly. In my
13 responsibilities at the Nuclear Energy Division when I
14 was Manger of Product Service, I was responsible for the
15 service and the operating liaison to the utilities of the
16 total plant in those some seven or so nuclear plants
17 domestically that General Electric furnished on a turnkey
18 basis.

19 I had no responsibility for the initial
20 installation of that equipment, but I did have the respon-
21 sibility for servicing of it after it was in commercial
22 service and turned over to the utility.

23 Q And your responsibility then was for the whole
24 plant which happened to have as part of it one of its
25 components was a diesel generator?

Sim 17-14 1

A That is correct.

2

Q But it would be fair to say that you were not

3

responsible for the actual supervision of the installation

4

or maintenance of those diesel generators?

5

A Not in a direct hands-on function, no.

6

Q Would it be fair to say that your responsibility

7

involved just processing of paper that might have directed

8

people to do work on the diesel engines?

9

A In some cases that would be the way that the

10

product service function was handled, but that wasn't always

11

the case.

12

I don't personally recall doing any large

13

amount of work on diesel generators, although I know that

14

during the period of time from 1966 through the early '70's,

15

I know that in some of the turnkey plants we did have some

16

diesel generator problems, particularly starting reliability

17

and I know that work was done, but I was not intimately

end Sim 18

Sue fols

19

involved with it.

20

21

22

23

24

25

#18-1-SueT

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q And would it be fair to say you don't have any specific recollection of any personal involvement in that work?

A (Witness Bridenbaugh) No, I have no specific recollection of that. I would like, however, to point out that I did work as a start-up engineer in a couple of nuclear plants that were turn-key plants. And so I was very closely associated with the maintenance and the start-up of that equipment.

Q Gentlemen, have either of you ever operated a diesel generator?

A No.

(Witness Hubbard) I have not operated it. However, I was responsible for the equipment, like the control room equipment, that was used to initiate operation of it.

Q That's electrical equipment; is that correct?

A Electrical equipment and also the various instrumentation and monitoring equipment.

Q Gentlemen, have either of you ever been responsible for procurement of a diesel generator for nuclear service?

A (Witness Bridenbaugh) I have not.

(Witness Hubbard) I have not.

Q Now, Mr. Hubbard, have you ever been involved in and conducted a pre-operational test program for a diesel generator for a nuclear plant?

#18-2-SueT

A (Witness Hubbard) No, I have not.

2 Q Now, Mr. Bridenbaugh, earlier you said that you
3 had been involved in some start-up programs, but I take
4 it, would it be fair to say you were not involved with the --
5 a start-up program specifically involving a diesel genera-
6 tor for a nuclear plant?

7 A (Witness Bridenbaugh) Well, I think that --
8 it's hard to answer that question like that. I was involved
9 in the start-up program of at least two nuclear plants
10 directly and, of course, the part of any nuclear plant's
11 start-up test program is to test the functioning under the
12 various conditions of the emergency AC power supply system.

13 So, I was involved in the -- to the extent that
14 I was there when that was done.

15 Q Mr. Bridenbaugh --

16 JUDGE MILLER: Just a minute.

17 BOARD EXAMINATION

18 BY JUDGE JOHNSON:

19 INDEXXXX Q Perhaps you can help in this way. You said, I
20 think, that you were a start-up engineer for G.E. plants?

21 A (Witness Bridenbaugh) Yes, that's correct.

22 Q Nuclear plants, of course?

23 A I worked in the start-up function in both
24 nuclear and fossil plants.

25 Q Okay. As start-up engineer, was it part of your

#18-3-SueT 1

2 duty to personally supervise, as would a foreman on the job,
3 either maintenance, installation, pre-operational testing,
4 anything like that, of a diesel generator?

4 A Not as a foreman, no.

5 Q Not that intimately?

6 A That's correct.

7 Q From control room, from supervisory levels, but
8 not anything related to hands-on?

9 A That's true for diesel generators. It's not
10 true for other portions of the plant.

11 Q I'm only asking about diesel generators.

12 A Yes, ma'am.

13 MS. LETSCHE: Excuse me. I wonder if I could
14 have a clarification for the record. When you said work --
15 anything related to hands-on experience, I'm not sure what
16 that meant. I'm not sure if the witness understood what
17 you meant by that, Judge Johnson.

18 JUDGE JOHNSON: All right. Very often, in plant
19 operations of any sort, the people who are actually doing
20 the work are instructed by, or supervised by, or overseen
21 by, the foreman who presumably knows at least as much about
22 the work as the people doing the job.

23 Does that help you?

24 MS. LETSCHE: My question was for the assistance
25 of the witness, to make sure he had understood your question.

#18-4-SueT 1

So, if that's the clarification, then --

2

JUDGE JOHNSON: I thought you wanted the clarifi-

3

cation personally.

4

WITNESS BRIDENBAUGH: I might just respond that

5

my responsibilities in all of the nuclear plant work and

6

the fossil plant and other industrial plant work that I

7

have performed has been as an engineer, not as a foreman.

8

The foreman is normally a craft worker and so

9

my position, if you will, in the structure of things would

10

have been above the foreman at some level.

11

JUDGE JOHNSON: That's what I understood, but

12

I wanted the record clear on it. Thank you.

13

WITNESS BRIDENBAUGH: Yes.

14

BY MR. EARLEY: (Continuing)

15

Q In your capacity as an engineer, did you have

16

any direct responsibility for engineering associated with

17

the diesel generator?

18

A Not that I can recall other than in the monitoring

19

of plant performance that I did when I was at G.E. in San

20

Jose.

21

Q Gentlemen, have either of you ever been employed

22

by an electric utility company?

23

A I have never been employed directly on the pay-

24

roll of an electric utility company. I have been employed

25

as a consultant and a service engineer to many, many utility

#18-5-SueT1

companies, probably thirty, forty or fifty.

2 Q Mr. Hubbard, have you been employed by an
3 electric utility?

4 A (Witness Hubbard) I have not been on the pay-
5 roll; however, I have done consulting for electric utilities.

6 An example would be that I did, with Mr.
7 Bridenbaugh, a study of the economics of the Palo Verde
8 project for the City of Riverside when they were looking at
9 buying into the Palo Verde project.

10 Q At the time you did that, they didn't own the
11 Palo Verde project, correct?

12 A They didn't at that time. And following our
13 study, they did buy in.

14 Q Mr. Bridenbaugh, in your testimony concerning
15 work for an electric utility, were you referring to work
16 while you were at General Electric for electric utilities?

17 A (Witness Bridenbaugh) That was the primary
18 reference. But I have subsequent to leaving General
19 Electric also done some consulting work for several utilities.

20 One is the City of Riverside that Mr. Hubbard
21 spoke of. I also was employed as a consultant to the
22 City of Austin, Texas. In the past eight years, I have
23 done some work for a law firm representing a Nebraska utility
24 in the assessment of nuclear plant construction problems.

25 And I also did some consulting work for a firm

#18-6-SueT

1 in Washington State who was representing the joint venture
2 company involved with the WPPS plant.

3 Q Have either of you ever performed torsional
4 stress calculations for a crankshaft of the diesel
5 generator?

6 A No.

7 (Witness Hubbard) No.

8 Q Mr. Bridenbaugh, have you ever been employed as
9 a member of a quality assurance/quality control organiza-
10 tion that was implementing Appendix B to the NRC's regula-
11 tions, Part 50, Appendix B?

12 A (Witness Bridenbaugh) I have never been
13 employed as a quality -- or by a quality assurance or
14 quality control function. However, in my responsibilities
15 at the Nuclear Energy Division where I was Manager of --
16 when I was Manager of Product Service, Appendix B of
17 10 CFR 50 was placed into effect and I was assigned the
18 responsibility for coordinating the efforts of the service
19 organization in the development of a plan to bring those --
20 the efforts of that organization into compliance with
21 Appendix B.

22 So, it was done under my direction.

23 Q Have either of you gentlemen ever been employed
24 by Transamerica Delaval, Incorporated, the manufacturer of
25 the diesels at Shoreham?

#18-7-SueTj

A No.

2

(Witness Hubbard) No.

3

Q Have either of you ever been employed in any way

4

by LILCO?

5

A Not directly, but, you know, clearly indirectly

6

while I was Manager of Quality Assurance. We built a

7

majority of the General Electric equipment that was sent

8

to the Shoreham station. And likewise at the earlier time

9

the Manager of the project was under my authority and at

10

an earlier time than that I had engineers who participated

11

in the bid review of the Shoreham plant when General

12

Electric originally bid on it.

13

So, I've been involved in Shoreham for a number

14

of years.

15

(Witness Bridenbaugh) I haven't been employed

16

directly by LILCO, but I do recall when I was working on

17

large steam turbine generator tests in Schenectady in 1955,

18

'56, I ran a test on -- or directed a manufacturing test on

19

a steam turbine generator that LILCO was in the process of

20

buying from the General Electric Company.

21

Q Now, while both of you were at General Electric

22

and, in fact, at any time I take it neither of you had

23

any responsibility or personal knowledge concerning the

24

procurement of the TDI diesels at Shoreham?

25

A I did not.

#18-8-SueT1

(Witness Hubbard) I did not, Mr. Earley, but --

2 Q And you were not personally involved then in the
3 installation or testing of those TDI diesels at Shoreham,
4 correct?

5 A (Witness Bridenbaugh) No.

6 (Witness Hubbard) I was not; however, I have
7 reviewed documents relating to that as part of the ongoing
8 discovery and various proceedings that are going on relative
9 to the diesels.

10 Q Other than what you have learned from reviewing
11 documents relating to Transamerica Delaval, I take it you --
12 neither one of you are familiar with the QA and QC
13 activities of other vendors of diesel generators for nuclear
14 power plants; is that correct?

15 A Not totally. I was -- one of the things I did
16 was get the I&E reports of a vendor inspection group of
17 Transamerica Delaval, and I looked at those and I was also
18 curious how Colt might compare, for example. So, I did get
19 all the vendor inspection reports of Colt and looked to see
20 what had gone on there.

21 I was familiar with that because when I was at
22 General Electric, we were the first plant to participate in
23 the vendor inspection program and the actual development of
24 the NRC procedures for that. And then I also --

25 MR. EARLEY: Judge --

&18-9-SueT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

A (Continuing) -- drafted the procedures for --

MR. EARLEY: Judge Miller, if I may interrupt.

A (Continuing) -- the EMDs.

MR. EARLEY: I think --

JUDGE MILLER: Hold it right there. What's your point?

MR. EARLEY: I don't think that this portion of the answer is really responsive to the answer that he had reviewed I&E reports for Colts. I think we can speed up the voir dire.

MS. LETSCHE: Your question, excuse me, Mr. Earley, was if he was familiar with any other manufacturer's programs and if he was going to tell us something in addition to the Colts, I think that is responsive.

MR. EARLEY: It was manufacturers of diesel generators, Ms. Letsche, and I don't think his answer was responding to that. He was discussing his involvement at G.E. with the vendor inspection program.

JUDGE MILLER: What was the question?

MR. EARLEY: The question I thought called for a very simple answer. I asked him whether, other than his review of TDI documents, whether he was familiar with quality assurance and quality control activities of other vendors of diesel generators for nuclear utilities. And I believe the witness described that he had also reviewed some

#18-10-SueT

I&E reports for Colt.

2

MS. LETSCHL: But he had not finished his answer.

3

And I suspect -- I don't know, because he hasn't said it

4

yet -- that he perhaps may have been about to identify

5

some additional vendors with which he was familiar.

6

I think the witness should be permitted to finish

7

his answer.

8

JUDGE MILLER: Yes, you may finish.

9

WITNESS HUBBARD: The other area I looked into

10

with the vendor inspection reports related to the EMD diesels

11

to see what that history would be.

12

BY MR. EARLEY: (Continuing)

13

Q Mr. Bridenbaugh, what would your answer be to that

14

question?

15

A (Witness Bridenbaugh) I have done a review of

16

the I&E vendor inspection reports similar to Mr. Hubbard

17

but probably not to the depth that he has performed at.

18

Q Would it be fair to say then, gentlemen, your

19

knowledge of the quality assurance and quality control

20

activities of diesel generator vendors in this country is

21

limited to what you have learned from your view of TDI

22

documents and looking at I&E reports from the NRC for those

23

vendors?

24

A I'm not sure what you include, Mr. Earley, in

25

the category of TDI documents. If you mean only those

#18-11-Sue1

1 documents obtained from TDI, I would say I would certainly
2 have to disagree with you. As, I'm sure you are well aware,
3 the TDI Owners' Group has produced a wide variety of docu-
4 ments, not all of which are sourced from TDI.

5 So, I have certainly been involved in many
6 different sources of information as a result of my partici-
7 pation in that effort.

8 Q I didn't mean to limit you to just TDIs docu-
9 ments, just other than documents that involve TDI and TDI
10 engines, regardless of who produced them.

11 I take it, the state of your analysis, you have
12 reviewed documents associated with TDI and then you have
13 also looked at I&E reports for Colt and I believe you said
14 EMD, and that's the extent of your knowledge of those other
15 vendors, correct?

16 A (Witness Hubbard) Yes, Mr. Earley. Also, we
17 are relying on all our -- I am relying on all my experience
18 in working with vendors of electromechanical equipment that
19 I dealt with while I was at General Electric.

20 Q But in that experience, you didn't have any
21 experience with vendors of other diesel generators for
22 nuclear service?

23 A That's true, but I had relations with many
24 people who built electromechanical devices similar to
25 diesels, so --

&18-12-SueT 1

2 Q Well, Mr. Hubbard, isn't it true that in testimony
3 before the Public Service Commission several months ago in
4 response to some questions, you said your knowledge of
5 other diesel generator vendors was limited to I&E reports
6 that you had reviewed?

7 A Isn't that correct?

8 A That's true, and the same thing I said here
9 related to diesel manufacturers. But a diesel is an
10 electromechanical device. I was involved in writing the
11 standards for that sort. While I was at G.E., I was in-
12 volved, you know, and the quality people approved all the
13 procurements that G.E. did.

14 So, I had resident inspectors who were at a
15 number of, you know, electromechanical plants. So, I'm
16 generally familiar with what we would expect that type of
17 organization to do.

18 Q Mr. Bridenbaugh, could you describe for me what
19 business MHB is in?

20 A (Witness Bridenbaugh) Yes. MHB is in the
21 consulting business. We provide technical consulting to
22 organizations wishing independent evaluations of primarily
23 nuclear plants, both economically and -- economic assessments
24 and safety assessments.

25 Q So, you don't design or manufacture any products,
do you?

#18-13-SueTJ

A No, sir. Not in the -- no hardware at any rate.

2 Q And do you provide any services to owners of
3 nuclear plants involving the actual design, construction
4 or operation of such plants?

5 MS. LETSCHE: Do you mean, do you or have you,
6 has the Company in the past?

7 MR. EARLEY: I asked, do they perform those
8 services.

9 WITNESS BRIDENBAUGH: Well, I think, Mr. Earley,
10 I indicated to an earlier answer, or earlier question,
11 that the -- my company and I have performed consulting
12 services for several different utilities. One was the City
13 of Riverside. One was the City of Austin, Texas. One
14 was the nuclear power -- I'm sorry, Nebraska Public Power
15 District. And another one in Washington.

16 Those are the only ones that I can think of right
17 at the moment. But we have done that in the past.

18 BY MR. EARLEY: (Continuing)

19 Q But, wouldn't it be fair to say that those
20 services did not involve the actual design of components,
21 the construction of components, or the physical operation
22 of that nuclear power plant, correct?

23 A Yes, sir. That's certainly correct.

24 Q Mr. Hubbard, approximately how many proceedings
25 have you testified in concerning nuclear power issues?

#18-14-SudT

1 A (Witness Hubbard) I really don't have a count.
2 I don't know.

3 Q Well, would it be fair to say from looking at
4 your resume that you submitted testimony in excess of
5 twenty times?

6 A And I will refer you to your list of publications.

7 A Whatever the list is. That's what it is. I
8 would agree that the list there is representative of the
9 testimonies I have presented.

10 Q And there may be other pieces of testimony that
11 you have submitted in other proceedings, NRC proceedings,
12 or proceedings involving nuclear plants?

13 A Yes, there may be. But I'm not aware of any of
14 a major nature.

15 Q And, Mr. Bridenbaugh, would it be fair to say
16 that your resume indicates you submitted testimony approxi-
17 mately or in excess of forty times in proceedings involving
18 nuclear power issues?

19 A (Witness Bridenbaugh) I haven't counted the
20 number of proceedings either. All of the testimony that I
21 can recall is listed on the resume. So, it, too, shows
22 whatever I have done.

23 end #18
24 Joe flws

25

#19-1-Wall

2 Q Mr. Hubbard, you mentioned that you co-authored
3 an IEEE standard. Did that standard -- does that standard
4 apply to a diesel engine?

5 A (Witness Hubbard) IEEE 336 is cited in the FSAR
6 as one of the standards that LILCO is applying.

7 Q Mr. Hubbard, maybe you misunderstood the
8 question. Does IEEE standard 336 apply to a diesel engine?

9 A I have a question about that myself. I'm going
10 to look at -- I did look in the FSAR though. That is one
11 of the standards that is cited as being, you know, LILCO
12 has committed to in Section 8.3 of the FSAR.

13 Q Well, Mr. Hubbard, you wrote the standard. You
14 claimed you were an author of it.

15 Does it apply to diesel engines?

16 A I would have to look at the first part of it
17 to see if it applies or not. If I had -- if you have a
18 copy of it, I can tell you very quickly. There is a part
19 in the front that talks about what it's applicable to.

20 But I did look to see that LILCO committed to
21 using it for the installation of the diesel system.

22 JUDGE MILLER: I think we are going to have to
23 suspend at this point.

24 MR. EARLEY: Judge Miller, I have only a few
25 more questions on voir dire if you would like me to finish.

JUDGE MILLER: Does anybody else have voir dire?

#19-2-Wal 1

MS. LETSCHE: Judge -- I'm sorry.

2

MR. PERLIS: I have none.

3

MR. ZAHNLEUTER: No, Your Honor.

4

MS. LETSCHE: I would have a very short amount of redirect. I would request, Judge Miller, on behalf of the witnesses that, you know, we try to get as far along as we can today. They are here from California and would like to get as much of this out of the way --

9

JUDGE MILLER: Well, they obviously are going to have to be here Monday.

11

MS. LETSCHE: Well, if the Board is going to rule that they aren't qualified to provide any of this testimony based on the voir dire so that --

13

14

JUDGE MILLER: Not based on voir dire. We are going to consider the whole matter of the motion filed, of your argument and so forth.

15

16

17

MS. LETSCHE: You don't intend to rule on the motion to strike today?

18

19

JUDGE MILLER: No.

20

MS. LETSCHE: Okay.

21

JUDGE MILLER: So, I think there is no way to avoid the witnesses having to be made available Monday at least, because I don't know.

22

23

24

MS. LETSCHE: Well, then what I would suggest is that Mr. Earley at least complete his portion of the

25

#19-3-~~6~~¹²²1

1
2 voir dire and we are at a logical breaking point at that
time.

3 JUDGE MILLER: How much longer do you have?

4 MR. EARLEY: Judge, if the Board is not going
5 to rule on the motions to strike, if --

6 JUDGE MILLER: No, we are not going to rule
7 today.

8 MR. EARLEY: I can stop and pick up where I am.
9 Judge Johnson, do you have a question?

10 JUDGE JOHNSON: Yes. I would like to hear the
11 answer to your last question. I would like to know what
12 the scope of IEEE 336 is, and any other standards that
13 Mr. Hubbard served as author, co-author, what have you.

14 WITNESS HUBBARD: There's really two answers
15 to that, Dr. Johnson. The first part is what the standard
16 is itself, and in the front part of the standard, Section 1,
17 it will say things that may be excluded from the standard.

18 JUDGE JOHNSON: Correct.

19 WITNESS HUBBARD: However, the second part is
20 the utilities in the FSAR often apply standards that in
21 the body of the standard it says it wasn't developed for
22 that purpose. And, for example, IEEE 336 I did look at
23 the FSAR and LILCO said they were applying that particular
24 standard for their work on the installation and inspection
25 and testing of the onsite AC power system.

#19-4-~~Sub~~^{up}

JUDGE JOHNSON: My question is much more limited.
2 I would simply like to know the scope of the standards that
3 you referenced in your --

4 WITNESS HUBBARD: Okay.

5 JUDGE JOHNSON: -- not the application that may
6 have been made of them.

7 (The witness is going through documents.)

8 And that answer can wait until Monday.

9 WITNESS HUBBARD: If you turn to my resume, at
10 Page 4, the IEEE 467, that's the QA program requirements
11 for Class 1E instrumentation and electric equipment. So,
12 that is the general subject.

13 The diesel is Class 1E equipment. Now, there
14 are specific exclusions in the front of these standards.
15 And I will have to refresh my memory over the week-end if
16 diesels are specifically excluded.

17 JUDGE JOHNSON: That was the reason for my
18 saying it could wait until Monday.

19 WITNESS HUBBARD: Okay. I will do that over
20 the week-end.

21 JUDGE MILLER: Let me inquire, if there are any
22 further matters that you are going to take up on voir dire,
23 because we are going to recess, apprise the witnesses of
24 them now so they will have the opportunity to familiarize
25 themselves if there are any further documents, issues or

#19-5-^{Wal}~~3001~~

matters of that kind.

2 MR. EARLEY: I will have some further questions
3 on IEEE 336 and this witness' knowledge of that.

4 JUDGE MILLER: All right.

5 MR. EARLEY: But I don't have any other documents
6 that I'm going to be referring to, just some additional
7 questions.

8 MS. LETSCHE: Judge Miller, I wonder just as a
9 matter of housekeeping here, I believe Mr. Earley indicated
10 that he just had a few more questions on the voir dire, and
11 just so we are not starting up in the middle of one counsel's
12 examination on that subject, it might be easier if we just
13 went ahead and got that portion finished and we could
14 answer the Board's questions.

15 JUDGE MILLER: The Board would prefer to suspend
16 at this point. We have got to get to work tomorrow at
17 9 o'clock on limited appearances, and it has been a long
18 week.

19 MS. LETSCHE: Very well, Your Honor.

20 JUDGE MILLER: We will be back Monday morning.
21 We will suspend now. We will hear limited appearances
22 tomorrow morning.

23 We will resume the evidentiary hearing, I believe
24 it's this courtroom, this coming Monday. Saturday, tomorrow,
25 we will hear the limited appearances.

#19-6-Wal 1

(Whereupon, at 4:53 p.m., the hearing was
adjourned, to reconvene in the limited appearances
session on Saturday, August 4, 1984, Riverhead,
New York; to reconvene the evidentiary hearing at
9:00 a.m., Monday, August 6, 1984, Hauppauge,
New York.)

* * * * *

ENDDDDDD

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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: Friday, August 3, 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

MARY SIMONS

Official Reporter - Typed

Mary C. Simons
Official Reporter - Signature