

ORIGINAL

1 UNITED STATES OF AMERICA  
2 NUCLEAR REGULATORY COMMISSION  
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5 In the Matter of:  
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9 CONFERENCE OF COUNSEL  
10 SHOREHAM/EMERGENCY PLANNING  
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15 OPEN MEETING  
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Pages: 13,085 - 14,041

Date: Wednesday, August 8, 1984

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2 UNITED STATES OF AMERICA  
3 NUCLEAR REGULATORY COMMISSION  
4 ATOMIC SAFETY AND LICENSING BOARD

5 Before Administrative Judges

6 James A. Laurenson, Chairman  
7 Dr. Jerry R. Kline  
8 Mr. Frederick J. Shon

9 In the Matter of:

10 LONG ISLAND LIGHTING COMPANY

11 (Shoreham Nuclear Power Station, Unit 1)

12 (Emergency Planning Procedure)

13  
14 Docket No. 50-322-OL-3

15 August 8, 1984  
16  
17  
18  
19

20 ATTENDEES:

21 J. Laurenson, Chairman  
22 J. Kline  
23 F. Shon  
24 R. Zahnlauter  
25 K. Letsche  
C. McMurray  
D. Hassell  
B. Bordenick  
O. Pirfo  
D. Irwin  
J. Christman

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PROCEEDINGS

1  
2 CHAIRMAN LAURENSEN: Let the record show that the  
3 Conference of Counsel is now in session, and that the  
4 State of New York, Suffolk County, the NRC staff, and  
5 LILCO are represented at this Conference of Counsel.

6 Before we started this morning, I distributed an  
7 agenda for the conference that we'll be following this  
8 afternoon.

9 But as things happens in this case, new items have  
10 come in after the agenda was typed early this morning,  
11 so if you will be so kind as to add IV-E to your  
12 agenda, and that will be the New York Motion to Acquire  
13 Subpoenas.

14 Also, just by way of reordering III-B, we're moving  
15 VI up to I and everything else will just move down one.  
16 We'll explain that as we go along.

17 First thing I wanted to do was to apologize for the  
18 lack of more notice of this conference, but as of  
19 yesterday, it appeared to us that things were starting  
20 to come unglued, and we felt that it was necessary for  
21 the board to intervene in the disputes to achieve a  
22 fair and prompt resolution.

23 The next thing I want to address is what is Item  
24 I-B. I've listed it as a warning about ad hominem  
25 rhetoric.

1 We have noticed that in the recently filed motions,  
2 briefs, and letters, there has been an increase in  
3 these type of attacks.

4 The hearing is drawing to a close. It has been  
5 a long and arduous case. Nevertheless, we will not  
6 countenance or tolerate personal attacks on witnesses,  
7 lawyers, or the board.

8 It should be apparent by now that such untoward  
9 tactics only detract from the argument or position  
10 being asserted.

11 While there has been and there will continue to be  
12 disputes among the attorneys and with the board, we  
13 have endeavored to treat each of you and all others who  
14 have appeared in this matter politely and with respect.

15 We expect that you will be the best advocate for  
16 your client without stooping to malign someone else.

17 In short, the time has come to deescalate the  
18 rhetoric. In the future, the board will entertain  
19 motions to strike any such pleading, motion, or brief  
20 in its entirety where it contains such ad hominem  
21 attacks.

22 Prior to the start of this afternoon's hearing, we  
23 distributed to each of you a ruling on the motion to  
24 compel the Rasbury deposition.

25 We were in the process of drafting a written



1 decision and order on the matter of the Suffolk County  
2 offer, proof and request for reconsideration concerning  
3 the FEMA witnesses earlier this week when we were  
4 buried under an avalanche of paper.

5 Nevertheless, we do plan to issue a written  
6 memorandum and order concerning this. However, to  
7 notify the parties in advance of next week's testimony  
8 by the FEMA witness panel, we are announcing today the  
9 bottom line of that decision.

10 The County's request for reconsideration is denied  
11 in all respects except for offer of proof number 16 on  
12 page 8 of the County's request under Contentions 93  
13 through 96.

14 Our reasons for this ruling will be contained in  
15 the written memorandum and order.

16 Turning to III, the sua sponte strike issues, I  
17 wanted to start out by making some observations of the  
18 board's overview of these issues.

19 On July 24th, we issued our memorandum and order  
20 determining that a serious safety matter exists wherein  
21 we admitted three issues sua sponte.

22 We included in that order a schedule for discovery  
23 and hearing on these issues. We scheduled an oral  
24 report on the status of discovery for August 14th.

25 We want to emphasize to all parties that the so-

1 decision and order on the matter of the Suffolk County  
2 offer, proof and request for reconsideration concerning  
3 the FEMA witnesses earlier this week when we were  
4 buried under an avalanche of paper.

5 Nevertheless, we do plan to issue a written  
6 memorandum and order concerning this. However, to  
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20 determining that a serious safety matter exists wherein  
21 we admitted three issues sua sponte.

22 We included in that order a schedule for discovery  
23 and hearing on these issues. We scheduled an oral  
24 report on the status of discovery for August 14th.

25 We want to emphasize to all parties that the so-

1 called strike issues were not put into controversy by  
2 the parties, but by the board.

3 We will give all parties the opportunity to  
4 participate in our inquiry into these issues, but no  
5 party shall have the right to insist on a particular  
6 schedule because of witness unavailability.

7 In conclusion, we consider these so-called strike  
8 issues to be our issues, and we shall conduct the  
9 inquiry until we are satisfied with the state of the  
10 record.

11 To the extent that the parties wish to participate  
12 in this aspect of the case, they must be prepared to do  
13 so in accord with the board's schedule.

14 Now we turn to Item B, and that is the pending  
15 disputes. And before we go into the five specific  
16 disputes that we have, I indicated earlier that we  
17 wanted to talk about a stipulation concerning the  
18 issues.

19 And that stipulation goes to the question of  
20 whether there really is a disputed issue of material  
21 fact on the first issue.

22 That issue, from page three of our memorandum and  
23 order of July 24, is as follows. Whether LILCO's  
24 ability to implement its off-site emergency  
25 preparedness plan would be impaired by a strike

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1 involving the majority of its L.E.R.O. workers.

2 We have read the filings by LILCO in connection  
3 with this matter, and at this time, the board would  
4 like to inquire whether LILCO believes that there is  
5 any question of fact concerning this and whether LILCO  
6 would stipulate to an affirmative answer to question  
7 number one.

8 MR. IRWIN: Judge Laurenson, as I think our papers  
9 indicated, we believe that there is no issue of  
10 material fact, and we are prepared to stipulate that as  
11 the unions and LILCO and L.E.R.O. are presently  
12 constituted, a strike by those unions would affect the  
13 ability of L.E.R.O. to carry out its functions.

14 That's one of the things we put into our papers.  
15 That's one of the reasons we agreed to a condition  
16 regarding the effects of the strike.

17 CHAIRMAN LAURENSEN: Okay. I don't want to get  
18 into the question of the condition on the license,  
19 because I think that does raise other issues about the  
20 remedy and so forth.

21 I just want to determine first whether there is a  
22 dispute as to this fact about whether a strike would  
23 impair L.E.R.O.'s ability.

24 Now, given the fact of the LILCO stipulation to  
25 that effect, is there any reason that any of the other

1 parties have or want to advance, to take testimony on  
2 question number one?

3 MR. MCMURRAY: Judge Laurenson, yes. I believe  
4 Suffolk County has looked at these issues and  
5 determined that LILCO's stipulation would not be  
6 satisfactory.

7 This is due, number one, to LILCO's own licensing  
8 condition, which says that even if they would go to  
9 cold shutdown, that if there was some sort of  
10 determination by the NRC staff, that, in fact, the  
11 ability of L.E.R.O. to respond to a radiological  
12 emergency would not be impaired, then they could  
13 conduct other operations. Those operations have not  
14 yet been specified.

15 CHAIRMAN LAURENSON: Excuse me. You're jumping  
16 ahead of us again. You're into the remedy. The  
17 question is, in light of their stipulation that LILCO's  
18 ability to implement its off-site emergency  
19 preparedness plan would be impaired by a strike  
20 involving the majority of its L.E.R.O. workers, what is  
21 the issue of fact to be heard on issue number one?

22 MR. MCMURRAY: The issue of fact, Judge Laurenson,  
23 deals with the effect of a strike, not just one that is  
24 happening at the time that the radiological emergency  
25 occurs.



1           But the effect of a strike and the LILCO workers'  
2           ability to strike on L.E.R.O.'s ability to implement  
3           the plant, what we have found and what our witnesses  
4           are beginning to explore is that the L.E.R.O.  
5           organization does not exist at this time.

6           And I don't think that anyone can say that L.E.R.O.  
7           will, in fact, exist in its present scope and nature in  
8           the future.

9           In addition, the fact that there has been a strike  
10          which has severely demoralized the L.E.R.O. workers,  
11          the LILCO workers who comprise L.E.R.O., will impair  
12          the ability of LILCO to implement its plant.

13          CHAIRMAN LAURENSEN: But they've already agreed to  
14          that. That's what we're saying, they have stipulated  
15          that their ability is impaired.

16          Now what more would the county or anybody expect to  
17          develop that would be needed on this question one?  
18          That's what I don't understand.

19          MR. MCMURRAY: Well, Judge Laurenson, if their  
20          stipulation covers all time, that is, during the time  
21          there is a strike and during times when there is not a  
22          strike, then that's fine. We'll accept that  
23          stipulation.

24          CHAIRMAN LAURENSEN: The question doesn't have  
25          anything to do with any time except a strike, that's

1 all we're talking about. We're limited to the question  
2 the board...the issue the board has stated, which only  
3 concerns itself with the strike.

4 MR. MCMURRAY: Well, Judge Laurenson, this issue is  
5 also relevant to Issue 3, which you've raised, which is  
6 whether or not going to cold shutdown would in fact be  
7 sufficient.

8 CHAIRMAN LAURENSEN: That's another. I'm not  
9 getting to that. I'm not in any way trying to  
10 foreclose that, but in light of their position here, I  
11 just want to give the county or the state or anyone  
12 else, staff, an opportunity to explain to us why we  
13 should take testimony or allow discovery or spend a lot  
14 of people's valuable time on something where there is  
15 no dispute.

16 MR. MCMURRAY: Judge Laurenson, we, as I just  
17 explained, I believe that the issue I just raised is  
18 encompassed in both issues number one and three.

19 Now if issue number one is stipulated out, we would  
20 still raise the issue I just explained in responding to  
21 issue number three.

22 Does the states have a different position they want  
23 to be heard on?

24 MR. ZAHNLEUTER: Yes, I would like to be heard. I  
25 take it that LILCO has stipulated that there is a

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1 problem in that the plan would be impaired. I think  
2 that in order to know the remedy to the problem, we  
3 have to know what the problem is.  
4

5 The issue of fact would be how will LILCO or  
6 L.E.R.O. be impaired? In that vein, the state's  
7 discovery request which the county joined in, asks for  
8 documents that pertain to the union membership of the  
9 L.E.R.O. workers.

10 The state doesn't know this information, and we  
11 need to know it so that we can determine how LILCO is  
12 impaired.

13 It's one thing to say yes, LILCO is impaired, but  
14 it's another thing to know how, and the how is  
15 necessary to know which remedy is most appropriate.

16 So I would state that we need an opportunity for  
17 discovery and we would need a parallel opportunity to  
18 present testimony on that issue.

19 CHAIRMAN LAURENSEN: Mr. Bordenick?

20 MR. BORDENICK: Members of the board. First of  
21 all, I'd like to introduce Mr. Donald F. Hassell, who's  
22 sitting on my right.

23 He's a member of the Pennsylvania Bar. He will be  
24 filing a written appearance in this proceeding in the  
25 next day or so.

He will address this particular matter.

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1 MR. HASSELL: Essentially the staff's position,  
2 given LILCO's stipulation to first board issue, at  
3 least in the staff's view, it sees no need for  
4 discovery or testimony on that issue, because they are  
5 already conceding that they cannot implement the off-  
6 site emergency plan in the event of a strike.

7 The staff would see no need for testimony on that  
8 issue that ultimate issue.

9 CHAIRMAN LAURENSEN: Does the staff have any  
10 response to Mr. Zahnleuter's assertion that it's  
11 necessary to know in what way the LILCO response or  
12 L.E.R.O. response is impaired in order to fashion the  
13 right, correct remedy?

14 MR. HASSELL: Yes, I guess I would have a response  
15 to that. Before I get that far, I would point out one  
16 thing.

17 The staff's position at this time has been  
18 formulated without any discussion with FEMA, and as you  
19 know, FEMA has a certain expertise in off-site  
20 preparedness matters.

21 So our position is without having consulted with  
22 FEMA at this time. I guess one concedes, at least, in  
23 my view, that the off-site emergency plan cannot be  
24 adequately implemented.

25 I just don't see where it takes us to get into the

1 question of the nature of the impairment, if they're  
2 conceding that they cannot implement this off-site  
3 plan, given a strike.  
4

5 I don't think it would gain as much in terms of the  
6 record.

7 CHAIRMAN LAURENSEN: Mr. Irwin?

8 MR. IRWIN: What we are talking about...

9 MR. HASSELL: Excuse me. To come back, let me make  
10 a couple of observations. What we're talking about in  
11 terms of a strike is LILCO employees who are  
12 responsible adults who are committed by contract to  
13 perform labor of certain types, who are trained in  
14 accordance with procedures and instructions from  
15 L.E.R.O. and who presumably will do the duties for  
16 which they're paid in accordance with their contract.

17 What we're talking about when you have a strike is  
18 the absence of those people because of the exploration  
19 or other kind of disagreement over that contract.

20 LILCO is perfectly prepared to stipulate as we  
21 have, that LILCO cannot function without these people.

22 I think Mr. McMurray and Mr. Zahnleuter are  
23 engaging in wild speculation when they assert, as they  
24 are, that somehow when these people are back in place,  
25 they're not going to do their jobs.

We haven't discussed Mr. Zahnleuter's discovery

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1 request, but it goes into complete union membership  
2 of L.E.R.O., complete labor contracts between LILCO and  
3 L.E.R.O., correspondence between L.E.R.O. workers and  
4 LILCO since the onset of the strike, other kinds of  
5 things which, to our view, are totally outside the  
6 scope of the effect of a strike per se on LILCO.

7  
8 So I think we've got to differentiate between the  
9 kinds of issues which I believe the board raised and  
10 the kinds of speculation in which Suffolk County and  
11 New York State are engaging.

12 Therefore, we don't think there's an issue of  
13 material fact.

14 CHAIRMAN LAURENSEN: What is LILCO's response to  
15 the state's assertion that you need to get into the  
16 details of how LILCO is impaired in order to fashion  
17 the proper condition or remedy if that's what has to  
18 be done?

19 MR. IRWIN: Well, I think the impairment is simply  
20 the absence of trained, professional workers and, as  
21 we've said, we can't implement the plan. That's the  
22 impairment.

23 When the people are back on their jobs, we can  
24 implement the plan and the reactor can go back up. I  
25 think it's that simple.

I mean, unless they're talking about a totally

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1 different kind of impairment that I think we're talking  
2 about.

3 CHAIRMAN LAURENSEN: At this point, the board is  
4 going to take a short recess and we'll be back in a few  
5 minutes.

6 (Whereupon, a short recess was taken.)

7 CHAIRMAN LAURENSEN: The board had discussed and  
8 considered LILCO's stipulation and the arguments that  
9 we just heard.

10 We find that LILCO's stipulation that its ability  
11 to implement its off-site emergency preparedness plan,  
12 that its ability to implement the off-site plan would  
13 be impaired by a strike of a majority of L.E.R.O.  
14 workers and that it could not implement the plan during  
15 such a strike, totally resolves issue number one and  
16 leaves no dispute of material fact.

17 Accordingly, we find that the answer to question  
18 number one is yes, and that no discovery or testimony  
19 on this question is warranted.

20 In light of that ruling, we would suggest at this  
21 point that the parties examine the remaining five  
22 pending disputes under Part B to determine whether that  
23 changes or affects the position of any party concerning  
24 these pending disputes.

25 And I think the appropriate thing to do at this

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1 time is just to take another brief recess to give you  
2 an opportunity to look at the pending motions and  
3 objections that we have at this time on those  
4 questions.

5 (Whereupon, a brief recess was taken.)

6 CHAIRMAN LAURENSEN: The Conference of Counsel  
7 is back in session. Do the parties have any summary to  
8 report concerning the rest of this afternoon's agenda?  
9 Or should we just go through in the order we have it  
10 listed?

11 MR. IRWIN: There are two general constellations of  
12 issues which we took up and let me take a stab at  
13 describing them, subject to anybody else's comments or  
14 concurrence or difference of views.

15 The first one was the LILCO discovery of Suffolk  
16 County witnesses. The second was the New York State  
17 and Suffolk County request for discovery of LILCO.  
18 We take them in order.

19 With respect to the LILCO discovery of county  
20 witnesses, Mr. Christmas was informed earlier today, I  
21 believe, that four of the county's currently scheduled  
22 witnesses can be made available for deposition on  
23 August 13, three of them in San Francisco, one of them  
24 in Long Island.

25 The geography of the situation is regrettable but

1 acceptable to LILCO. More difficult is the apparent  
2 fact that a lot of these witnesses will have been  
3 otherwise committed until virtually that day.  
4

5 LILCO does have a difficulty with deposing  
6 witnesses to be who have not yet had a chance to think  
7 much about what they're going to testify about.

8 And we ask Suffolk County's attorneys whether they  
9 might be better prepared a week hence.

10 For LILCO's part, we'd be prepared to permit a  
11 week-long extension of the discovery period if, in  
12 fact, that would conduce to witnesses being better  
13 prepared, particularly if the testimony to be filed is  
14 going to be live.

15 We certainly would like to depose people after  
16 they've had a chance to think about what they're going  
17 to say.

18 If they have not had a chance, I think all we can  
19 do if say that if we find we have fruitless  
20 depositions, we'll have to take appropriate measures  
21 after the fact.

22 We don't believe that...well, we don't want to  
23 delay the hearings for that reason.

24 Talking to a witness who hasn't had a chance to  
25 think about his problems is not a very effective  
discovery.

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1  
2 But I think that if the witnesses, however, as  
3 professionals, I think they are, they will endeavor to  
4 try to think about their problems, and we'd be willing  
5 to work with the county on it.

6 But the long and short of it is that if the  
7 county's attorneys don't think that the witnesses would  
8 be better prepared and they said they had to talk with  
9 their witnesses, which they've not had a chance to do,  
10 we'll take their depositions on the 13th, for whatever  
11 it's worth, and try to protect ourselves thereafter.

12 If the witnesses will be better prepared within a  
13 week, we'll defer the depositions by a few days.

14 The second constellation of issues...

15 MS. LETSCHE: Excuse me. We'd like to do this at  
16 time is one at a time.

17 MR. MCMURRAY: Judge Laurensen, the problem is that  
18 Suffolk County's witnesses have had commitments that  
19 were made prior to the board's schedule.

20 And Mr. Minor, especially, has been involved in the  
21 low power proceedings. The fact is that these  
22 witnesses are available on the 13th and some of them  
23 have really had to stretch to make even that day  
24 available.

25 They have not had the opportunity to think about  
the issues in great detail so far, and that's just a



1 fact. I don't know whether or not there is going to be  
2 a point in time, for instance, during the following  
3 week where they will have had the opportunity to really  
4 focus on the issues.

5 But I can also inform you what we told Mr. Irwin,  
6 and that is that Professor Olson and Professor Lipski  
7 are only available on the 13th and cannot be deposed  
8 after that date.

9 MR. IRWIN: I guess an additional factor is that  
10 some of these witnesses are apparently going to be  
11 unavailable on August 28th.

12 I guess LILCO has difficulty with a party's  
13 proposing as experts witnesses who, a, have not yet  
14 engaged the problem seriously, and, b, are not prepared  
15 to go forward on a date which the board has set for  
16 hearing.

17 We will do the best we can, but we think we're  
18 entitled to fair discovery and I guess part of what is  
19 going to end up being fair discovery is going to be  
20 when that hearing is going to take place.

21 We're assuming it's going to take place on the  
22 28th, and the county will do its best to provide  
23 witnesses by that date.

24 We'll know who they are, and then we can depose  
25 them after they've had a chance to think about their

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1  
2 work. And that's why we're willing to waive the 14th  
3 as a cutoff on discovery.

4 But you know, if a party has ideas and experts are  
5 a necessary response, then we assume that they will get  
6 those experts in place far enough ahead for other  
7 parties to know what the experts are saying.

8 CHAIRMAN LAURENSEN: Let me just ask a question.  
9 Has there been a chance in the identity of the  
10 witnesses that the county intends to call on this  
11 issue?

12 MR. MCMURRAY: Just one, Judge Laurensen, and we  
13 added one as of today. That's Professor Lipski. And  
14 he hopefully will be able to testify for the county.

15 He will be made available on the 13th in San  
16 Francisco to be deposed. He just came down from Mt.  
17 Ranier.

18 This is the first time we've been able to contact  
19 him. He has literally been out of contact with the  
20 outside world.

21 CHAIRMAN LAURENSEN: But these witnesses, other  
22 than Mr. Minor, would be testifying also on issues 2  
23 and 3?

24 MR. MCMURRAY: Specifically issue 3, I think. It  
25 would also encompass issue 2. That's correct.

MR. IRWIN: That's a matter of definition of issue

1  
2 3, which probably ought to be taken up with the board  
3 pretty soon.

4 And let me take a stab at it, again, not pretending  
5 to speak for anybody but myself.

6 LILCO understands the issues raised by the board as  
7 being concentrated on whether L.E.R.O. could function  
8 during a strike, and if not, what the consequences are  
9 for the operation of the plant as a direct result of  
10 that strike and during it.

11 Suffolk County, as LILCO understands, believes that  
12 the issues are broader than that and go to the question  
13 of whether or not L.E.R.O. could be reconstituted  
14 adequately after a strike, and if not, or if not what  
15 its consequences are.

16 And they wish to probe issues as LILCO understands  
17 it, which go to the question of whether or not L.E.R.O.  
18 would be likely to be put back into place after a  
19 strike were concluded.

20 We, LILCO believes that that is outside the scope  
21 of issues which the board delineated and believes also  
22 that it violates presumptions about whether or not  
23 professionals who are contractually committed will do  
24 their work, and secondly, whether or not the NRC would  
25 permit LILCO even if it were to try to start the plant  
up again without an off-site plan in place to do it.

1  
2 In short, we think it's outside the scope of the  
3 issues. It ought to be before the board, but a lot of  
4 things involving discovery, the scope of issues which  
5 the board must hear, and the schedule of the hearing, I  
6 think, are dependent on whether or not that question is  
7 within the scope of question three as the county  
8 believes it is.

9 MR. MCMURRAY: Judge Laurenson, I think the issue  
10 is slightly different from the way Mr. Irwin has  
11 phrased it.

12 The issue is set forward in the board's order of  
13 July 24, which states the issue is being whether  
14 placing the reactor in cold shutdown during a strike by  
15 L.E.R.O. workers would give reasonable assurance that  
16 adequate protective measures can and will be taken in  
17 the event of a radiological emergency.

18 Now LILCO is going through a strike right now, and  
19 as we understand it, all L.E.R.O. workers have  
20 resigned from L.E.R.O..

21 There is also been a lot of press about how this  
22 has been a very bitter strike, about how the L.E.R.O.  
23 workers have resigned from L.E.R.O. in disgust and  
24 bitterness.

25 And the problem here is whether or not L.E.R.O. as  
an entity is ever going to function again the way LILCO

1 thinks it's going to function.

2 Mr. Irwin says that this organization is made up of  
3 people who are contractually obligated to perform their  
4 functions.

5 It's not. It's a volunteer organization and these  
6 workers have volunteered. They volunteered before the  
7 strike, before the bitterness that's arisen.

8 And although there may be, I think, as Mr. Irwin  
9 told us, some sort of letters of agreement, they're not  
10 contractually obligated to ever work for L.E.R.O. and  
11 to ever perform those functions during a radiological  
12 emergency that LILCO expects them to perform.

13 I think this issue is squarely within issue 3, set  
14 forth by the board, which asks whether a cold shutdown  
15 or commitment to go to cold shutdown is going to give  
16 reasonable assurance that this plan can work.

17 CHAIRMAN LAURENSEN: Well, this was the county's  
18 argument, as I recall, the day that we had a discussion  
19 in Hauppauge, concerning whether or not we should consider  
20 the strike to be a sua sponte issue.

21 And that position by the county was not accepted by  
22 the board. We did not delineate that as one of these  
23 issues, and in fact, the key words on issue number 3  
24 are ones that you omitted in just reading the  
25 contentio...



1 That is, after the reactor has operated at full  
2 power. That's not the condition that you're talking  
3 about today, the strike that's going on right now.

4 We're talking about whether placing the reactor in  
5 cold shutdown during a strike after it has operated at  
6 full power would give reasonable assurance.

7 MR. MCMURRAY: That's right, Judge. I don't see  
8 the distinction the board is making. We are talking  
9 about after the plant has gone on line, can this  
10 L.E.R.O. organization function the way LILCO expects it  
11 to, after a strike has occurred.

12 This strike and strikes that can occur in the  
13 future, and which are unique to private organizations  
14 such as LILCO is going to cause, is going to impair  
15 LILCO's ability, L.E.R.O.'s ability to respond to a  
16 radiological emergency even after the plant goes to  
17 full power.

18 CHAIRMAN LAURENSEN: I understand your argument,  
19 but I just don't see that in either issues 2 or 3.  
20 Neither one of those issues, in my reading of them, is  
21 broad enough to encompass the county's concern.

22 I acknowledge the fact that that was the county's  
23 argument that was presented when we heard oral  
24 arguments on Long Island, but we did not accept that as  
25 one of the board's sua sponte issues in the case.

1 MR. MCMURRAY: Judge Laurenson, I can understand  
2 the board's narrow reading of this issue if it was to  
3 read that the issue was whether or not placing the  
4 reactor in cold shutdown would give reasonable  
5 assurance that adequate protective measures can and  
6 will be taken in the event of a radiological emergency  
7 during a strike.

8 That would be one thing, but that is not the issue.  
9 The issue is, when there is a radiological emergency at  
10 Shoreham that occurs after the plant has gone to full  
11 power, can that plan be implemented?

12 And we say no, because when there is an  
13 organization that has been on strike and has to endure  
14 the consequences of that strike, and when there is  
15 the...when you're not going to have volunteers to  
16 participate, to fulfill the functions that have to be  
17 fulfilled, and when you have the possibility of a  
18 strike in the future, due to this bitterness that  
19 arises among a work force like LILCO's in the throes of  
20 a bitter strike, that the plan cannot be implemented.

21 That is the issue that's within the plain meaning  
22 of the words in issue 3.

23 CHAIRMAN LAURENSEN: Isn't issue 3 limited to the  
24 time during a strike?

25 MR. IRWIN: I hate to jump in, but I'm going to.

1 MR. MCMURRAY: I think I have a right to respond to  
2 that, Mr. Irwin, and I will as soon as I confer with  
3 co-counsel.

4 MR. IRWIN: Fine.

5 MR. IRWIN: I was just going to say it seems  
6 presumably the board knew what it meant when it wrote  
7 the issues.

8 CHAIRMAN LAURENSEN: You could have saved that one.  
9 (Laughter.)

10 MR. IRWIN: I can try again.

11 MR. MCMURRAY: Judge Laurenson, the reference to  
12 during a strike in issue 3 is whether or not placing  
13 the reactor in cold shutdown during a strike offers  
14 reasonable assurance that the plan can and will be  
15 implemented.

16 The commitment to put the plant in cold shutdown  
17 during a strike, however, does not mean that there  
18 would be reasonable assurance that adequate protective  
19 measures can and will be taken in the event of a  
20 radiological emergency that takes place when there's  
21 not a strike.

22 That is the whole point. You seem to be focusing  
23 on just what happens during a strike, and fine, the  
24 issue here is whether or not committing to putting the  
25 plant in cold shutdown during a strike is a proper

1 resolution of the issue.

2 But the problem is that the consequences of a  
3 strike have much broader scope than just during the  
4 strike.

5 Those consequences have an effect after a strike  
6 and I think that we can't just focus on whether or not  
7 there will be reasonable assurance that the plan can be  
8 implemented during a strike.

9 CHAIRMAN LAURENSEN: There indeed may be the  
10 consequences you speak of, but that isn't the issue  
11 that the board has admitted at this time.

12 That's all we're saying, is that to the extent that  
13 the parties are requesting guidance as to what we  
14 intended or what we meant by these issues, I think  
15 we're saying today that your interpretation is not what  
16 was intended, nor do we think is what the clear meaning  
17 of the words amounts to.

18 Mr. Zahnleuter, did you have position on this?

19 MR. ZAHNLEUTER: Yes. Perhaps I can offer an  
20 explanation of what I presume that the county is taking  
21 about.

22 Maybe an illustration would be in order, like,  
23 assuming that there is full power, a full power license  
24 and assuming that there is a strike and then assuming  
25 that a vote is taken and the strike is ended, is it at

1 that very point that all of a sudden L.E.R.O. will be  
2 deemed to be capable of reacting to a radiological  
3 emergency?

4 Or will it take some amount of time and some amount  
5 of work to bring L.E.R.O. back to that point?

6 I think that that's what the problem is, and I  
7 know, for example, that in this strike, LILCO cut the  
8 medical benefits off from the workers.

9 Then these L.E.R.O. workers, after they come back  
10 from a strike will have to deal with perhaps non-union  
11 people who were a part of L.E.R.O. and they'll have to  
12 work together as a team.

13 And the question is, will they be able to work  
14 together efficiently?

15 I look at the board's issue 3, and the last several  
16 words are, "In the event of a radiological emergency."  
17 That's taken in the context of reasonable assurance  
18 that adequate protective measures can and will be taken  
19 in the event of a radiological emergency.

20 I think the radiological emergency by definition  
21 has to occur at a time after the strike, not during the  
22 strike.

23 I think that perhaps what you're telling us now is  
24 that we should read the last few words not as "in the  
25 event of a radiological emergency" but as "in the event



1 of a strike."

2 CHAIRMAN LAURENSEN: No, we're talking about a  
3 radiological emergency occurring during a strike.  
4 That's the whole focus of these contentions, of these  
5 issues, I should say.

6 That was the import of our concern and what we  
7 found to be a serious safety matter.

8 Just a moment, please.

9 (Whereupon, a brief recess was taken.)

10 CHAIRMAN LAURENSEN: Back on the record. Have we  
11 resolved whatever it was that was in question? Is  
12 there still an ambiguity concerning the construction of  
13 issue number 3?

14 MR. IRWIN: Not in our mind. There are certain  
15 things which follow from that in terms of discovery  
16 consequences.

17 We had discussed with Suffolk County, the New York  
18 State Suffolk County discovery request, concerning  
19 effects of the strike, and we agreed on two different  
20 scopes of response, depending on the board's  
21 disposition of the strike issue as I understand it.

22 LILCO has agreed to provide Suffolk County and New  
23 York State discovery on items of the types listed, as I  
24 believe it, in items 12, 13, 14, and 15, perhaps, of the  
25 New York State Suffolk County request, dealing with,

1 first, the types of employees and their positions both  
2 union and non-union, who would be responsible for  
3 taking a plant to cold shutdown in the event of a  
4 strike.

5 Secondly, how the plant would be maintained in cold  
6 shutdown in the event of a strike. Third, calculations  
7 and other bases for belief on LILCO's part that cold  
8 shutdown was a sufficient measures.

9 LILCO's position, as our papers make clear, is that  
10 there cannot be any accidents with off-site  
11 radiological consequences requiring an off-site plan if  
12 the plant is in cold shutdown.

13 We've agreed to provide all documents relating to  
14 those areas to the county and to New York State.

15 The county and New York State indicated to us that  
16 they had withdrawn items numbers 10 and 11, and items  
17 number 1 through 9, which relate to L.E.R.O. worker  
18 composition, LILCO had opposed responding to, on the  
19 basis that they were germane only to issues which arose  
20 if LILCO disputed that a strike impaired L.E.R.O.'s  
21 ability to function.

22 LILCO does not dispute that. Or in the event that  
23 the issue of L.E.R.O.'s viability or return to  
24 viability after a strike were admitted by the board.

25 And since the board has indicated that that is not

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1 within the scope of the issues it contemplated  
2 admitting, LILCO does not propose to answer areas 1  
3 through 9.

4 CHAIRMAN LAURENSEN: Excuse me, Mr. Irwin. I think  
5 before you said you agreed to furnish the information  
6 in request number 15, did you mean 16 rather than 15?

7 MR. IRWIN: Yes, I meant 16. Our proposition as to  
8 15, the problem is, it's sort of two sides of the coin.  
9 LILCO believes that there will be no events requiring  
10 the availability of an off-site plan if the reactor is  
11 in cold shutdown.

12 We believe that the county in number 15, as  
13 clarified in discussions, is interested in probing our  
14 bases for that conclusion.

15 CHAIRMAN LAURENSEN: How long is it going to take  
16 LILCO to get this information together for the county  
17 and the state?

18 MR. IRWIN: Most of the information is either in  
19 the FSAR or existing procedures, or in the minds  
20 primarily of John Skaleze, who is available for  
21 deposition, as well as the other local witnesses.

22 I will go back. I believe that the calculations  
23 which would underlie the answers to 15 and 16 exist and  
24 they could be gotten together this week for the  
25 county.

1 CHAIRMAN LAURENSEN: You keep saying 15.

2 MR. IRWIN: 12 through 16. I believe...okay, I'm  
3 sorry. I believe that all of the documents which the  
4 county and the state seek, which are within the scope  
5 of the issues which I just outlined as being acceptable  
6 to LILCO could be turned over to them this week.

7 MR. MCMURRAY: Judge Laurenson, I have no quarrel  
8 with what Mr. Irwin has just said. As far as requests  
9 1 through 9 go, we're going to have to take another  
10 look at them in light of the board's ruling on the  
11 scope of issue 3 and see whether or not any of them are  
12 still viable.

13 CHAIRMAN LAURENSEN: What does this do as far as  
14 the depositions for next Monday?

15 MR. IRWIN: Nothing as far as I know, although I'm  
16 not sure, and I think we'll need to talk with the  
17 county further as to whether Professors Olson and  
18 Lipski and perhaps some of the Police Department  
19 proposed witnesses will still be within the scope of  
20 their intended case.

21 Clearly, Mr. Minor will be, but what others, I  
22 don't know.

23 MR. MCMURRAY: We're just going to have to talk  
24 about this further.

25 CHAIRMAN LAURENSEN: All right.



1 MR. IRWIN: At this point, with respect to LILCO  
2 depositions, the county has requested the depositions  
3 of Weismantle and Devario would not yet receive  
4 requests for depositions of any of our other intended  
5 witnesses.

6 CHAIRMAN LAURENSEN: As far as the county's first  
7 two objections as to the schedule, and to question of  
8 written versus oral testimony, I think at this point  
9 we'll just defer that until this matter progresses  
10 further so that we have a better idea of what likely  
11 format of the hearing is going to be and how long it's  
12 going to take and what's involved.

13 I think after you've completed more discovery,  
14 we'll be in a better position to rule on that. So  
15 those two items, I think, would just be deferred.

16 We would probably open it up for an oral argument  
17 some time during the next week or two, while we're up  
18 in Hauppauge, unless there's an objection to that method  
19 of proceeding.

20 MR. HASSELL: Judge Laurenson, I have missed which  
21 two items you were identifying.

22 CHAIRMAN LAURENSEN: B1 and 2. Suffolk County  
23 objection to the schedule of the hearing on August  
24 28th and the county's objection to oral versus written  
25 testimony.

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1 MR. HASSELL: Thank you.

2 CHAIRMAN LAURENSEN: Okay. Now on number 5, I  
3 inquire what the rulings today have done, if anything,  
4 to your motion for summary resolution.

5 MR. IRWIN: I believe that issue number 1 is  
6 resolved. As to issues 2 and 3, unless the board  
7 grants our motion, there is...actually, issue 2 may be  
8 resolved, too, because LILCO has stipulated that it is  
9 willing to place the plant in cold shutdown as a  
10 licensing condition.

11 The question really is whether placing the plant in  
12 cold shutdown is an adequate measure.

13 So depending on how one looks at it, either issues  
14 2 and 3 combined together, or issue 3 are in LILCO's  
15 view, the issue or issues left for trial.

16 The timing of LILCO's filing was such that under  
17 the normal rules, responses would be due from the other  
18 parties.

19 I believe the Thursday preceding the start of the  
20 hearing was filed on Friday the 3rd. So responses  
21 would be due Thursday, and filed by hand, although I'm  
22 afraid New York State didn't get it until Saturday  
23 morning, the 24th, for which I apologize. We'll give  
24 them until Friday, if they'd like.

25 What I'm sure of, though, is that the board would

1 have responses in hand before the start of the hearing,  
2 and if it appeared on the basis of those responses that  
3 there were no material issue, the hearing would be  
4 cancelled.

5 CHAIRMAN LAURENSEN: The problem is, as I see it,  
6 that we've obviously got a very tight schedule coming  
7 up, and if people are going to be expected to be  
8 putting on their case or cross-examining their  
9 opponents' case up in New York, it's very difficult to  
10 be putting together affidavits and responding to a  
11 motion for summary disposition or resolution or  
12 whatever you want to call it.

13 I guess what I'm asking is whether in light of the  
14 determination to accept the stipulation on issue 1,  
15 whether it's really a worthwhile venture to continue to  
16 proceed on the summary disposition as opposed to just  
17 putting this matter up for trial.

18 Or whether LILCO would be agreeable to a  
19 rescheduling of the matter after August 28th, to enable  
20 us to make a reasoned decision on it.

21 The fact that briefs come in on Thursday or Friday  
22 doesn't give a lot of time if the hearing is supposed  
23 to start the next Tuesday.

24 I think you've put everybody in just too tight of a  
25 bind on this.

1 MR. IRWIN: I recognize that difficulty. I'm torn  
2 because the issues are considerably narrowed. On the  
3 other hand, if one can resolve an issue without a  
4 trial, it's always a savings of resources on all  
5 parties' parts.

6 If ... well, I guess it would depend on the length  
7 of the deferral of the trial. Issues 2 and 3 as we now  
8 understand them are not very broad issues.

9 I don't think it would be a very long trial. On  
10 the other hand, if it turns out there are no issues to  
11 be tried, that's obviously preferable.

12 If there were a postponement of a week or less, I  
13 don't think LILCO would have any problem with it.

14 I don't know, frankly, what kind of matters Suffolk  
15 County would assert in a response.

16 On the other hand, even if the response indicated  
17 the existence of material issues of fact, within the  
18 scope of the board's outlined issue, it might be  
19 useful, simply because everybody would have everything  
20 out already there, and the trial could thereby be  
21 somewhat focused, or better focused.

22 I hate to waffle, but I will. A short trial on the  
23 28th is acceptable to LILCO in an attempt to resolve  
24 matters on paper is theoretically preferable if it can  
25 be done without significant delay.

1 I would define significant as probably more than a  
2 week.

3 CHAIRMAN LAURENSEN: Let me, before I go back to  
4 the county, inquire of the staff as to what the staff's  
5 position is on the question of summary resolution and  
6 the procedures of the proposed condition by LILCO.

7 I'm not asking for your position on the merits, but  
8 just as to the procedures that have been suggested  
9 here.

10 MR. BORDENICK: Judge Laurenson, I don't think we  
11 really have a preference one way or the other. I think  
12 we could be prepared to respond to the motion  
13 whenever...within the time that the rules state, if  
14 that's agreeable to the board, and apparently the board  
15 is disinclined to go that way.

16 Or we could be prepared to go to hearing as early  
17 as the 28th, as originally scheduled, or as how long  
18 thereafter deferred.

19 So we really have no particular preference in the  
20 matter, whatever the board feels is reasonable and  
21 suits particularly its convenience, we'll be ready to  
22 meet it.

23 MS. LETSCHE: Judge Laurenson, I think that the  
24 board is right, given the schedule you've set, that you  
25 want these issues litigated, according to it, I think



1  
2 it's basically next to impossible to deal with this  
3 summary disposition motion within that time frame.

4 As you noted, people are going to be in hearing  
5 starting next Tuesday, and so physically trying to  
6 write a response would be extremely difficult,  
7 particularly since at the same time, we would be  
8 dealing with the hearing. we would also be preparing  
9 for the hearing that would be starting on the 28th.

10 And doing that at the same time you're writing the  
11 summary disposition motions would be very hard, if not  
12 impossible.

13 And I don't really think that in this case there  
14 would be a savings of resources, either, because you're  
15 going to end up preparing for that hearing whether it  
16 would actually come off or not, because you're not  
17 going to get a ruling on a summary disposition motion  
18 until you're sitting there ready to go to trial.

19 It seems to me, frankly, that this instance, given  
20 the board's schedule that's been set, is one in which  
21 summary disposition motions don't make sense, and that  
22 unless you did decide to deal with that and then put  
23 off the hearing until a substantially later date so the  
24 board would have a chance to consider the merits of the  
25 motions, frankly, if you're going to do that, you might  
as well go ahead and have the hearing and consider the



1 merits that way. I think that it would be a real  
2 duplication of effort to try to do both.

3 And if you really want to stick to the schedule, I  
4 think it only makes sense to get rid of the summary  
5 disposition motions.

6 MR. IRWIN: I think issue 1 basically is resolved,  
7 isn't it?

8 MS. LETSCHE: As I understand it, that is out.

9 CHAIRMAN LAURENSEN: Anything else, Mr.  
10 Zahnleuter, on this question?

11 MR. ZAHNLEUTER: Well, you know, when I saw the  
12 board's order, I thought it precluded any motions for  
13 summary disposition.

14 I didn't think you gave the parties a choice for  
15 summary disposition; I thought you ordered that a  
16 hearing should start the 28th.

17 CHAIRMAN LAURENSEN: I just don't think we  
18 discussed the question of summary disposition. It  
19 hadn't occurred to us, frankly.

20 We'll just hold this in abeyance for the time  
21 being, at least for the rest of today's proceeding, but  
22 we'll let you know before we leave here this afternoon  
23 how we want to proceed on this.

24 Let me just pose an alternate question, and that is  
25 whether or not the county and state can respond to the

1 LILCO motion for summary resolution within the 20 days  
2 provided for in the rules?

3 MS. LETSCHE: It would be very, very difficult to  
4 do so. I don't want to say that we absolutely could  
5 not, because if we were ordered to do so, we obviously  
6 would file some piece of paper.

7 But as a practical matter, it would be extremely  
8 difficult between now and next Tuesday. There are  
9 depositions going on, and then starting next Tuesday,  
10 this hearing is four days a week.

11 There just aren't that many hours in a day. And in  
12 addition, as I said, we would be preparing for the  
13 hearing on the strike issues, both our director  
14 testimony and dealing with the discovery that's going  
15 to be taking place on the strike issue, and getting  
16 ready to cross-examine whatever testimony LILCO would  
17 put up on the 28th. I just don't think it's humanly  
18 possible to do it.

19 CHAIRMAN LAURENSEN: And LILCO's position, if I can  
20 summarize it, is that you want to go ahead with the  
21 motion and have a ruling on the motion before the trial  
22 starts, and if that necessitates a one-week delay,  
23 you're willing to reconvene the day after Labor Day or  
24 something along that line.

25 Is that your position?

1 MR. IRWIN: I only regret that we could have  
2 prepared the motion in one day rather than ten.  
3 LILCO believes the issues have been narrowed  
4 sufficiently that proceeding to trial on the 28th would  
5 not be inefficient, per se.

6 I think this afternoon has been helpful in framing  
7 the issues, and if the board believes that given what  
8 it knows and what it expects the issues to look like  
9 going to trial on the 28th and letting the summary  
10 resolution motion with respect to issues other than the  
11 question of the first issue, namely, the impairing of  
12 L.E.R.O. and issues associated with that, lapse, LILCO  
13 wouldn't object to that.

14 I think it's important that we understand what  
15 issues are in fact going to be subject to hearing, and  
16 as I understand it, it's going to be basically whether  
17 shutting the plant down with non-union employees and  
18 maintaining it in that condition during a strike  
19 requires the availability of an off-site response  
20 organization and is otherwise adequately protective of  
21 the public health and safety.

22 Those are the issues, I say let's go to trial on  
23 the 28th, but what I want to make sure of is that we've  
24 narrowed the issues somewhat this afternoon.

25 I think we have in that respect.

1 CHAIRMAN LAURENSEN: And the county's position,  
2 basically, is that if we're going to go to trial on the  
3 28th or even a week after, we cannot spend the time now  
4 answering the motion for summary disposition.

5 MS. LETSCHE: Yes, that is the county's position.

6 CHAIRMAN LAURENSEN: Okay.

7 MS. LETSCHE: Yes.

8 CHAIRMAN LAURENSEN: All right, and the staff  
9 doesn't care either way.

10 MR. BORDENICK: Well, after hearing all this, I  
11 think we'll make it unanimous. I think from our  
12 standpoint, it's more efficient just to go directly to  
13 hearing.

14 CHAIRMAN LAURENSEN: The board decided that in  
15 light of developments this afternoon, that it would be  
16 more efficient for all parties concerned to go forward  
17 with the hearing on August 28th and to...not requiring  
18 responses to the LILCO motion for summary resolution.

19 We will not rule on that motion to the extent that  
20 LILCO wishes to use that as some form of proposed  
21 findings or whatever.

22 Of course, it's available for that purpose after  
23 the fact, but it will not be treated as a motion for  
24 summary disposition in light of the scheduling problems  
25 between now and the time set for commencement of the



1 hearing on these issues.

2 Now let's turn to IV, the scheduling responses to  
3 other pending motions. Let me just ask, first of all,  
4 whether or not there's any objection by any parties to  
5 items A and B?

6 That is, does anyone...is there going to be any  
7 objection filed to the LILCO motion to admit revised  
8 testimony on the relocation centers?

9 Staff has already indicated yesterday, I believe,  
10 that it had no objection to that. Is there any  
11 objection to that by the county or state?

12 Or do they intend to file any such objection?

13 MS. LETSCHE: Frankly, Judge Laurenson, we haven't  
14 finished determining that at this point.

15 CHAIRMAN LAURENSON: We're going to have to set a  
16 schedule, then, when will ... what time do you suggest  
17 for that?

18 MS. LETSCHE: We could file that by Monday. I  
19 don't know what date that is. I've lost track of  
20 dates.

21 CHAIRMAN LAURENSON: That would be the 13th, then,  
22 you're talking about?

23 MS. LETSCHE: Yes, yes.

24 CHAIRMAN LAURENSON: Is there any objection to  
25 that request?

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1 MR. CHRISTMAN: No.

2 CHAIRMAN LAURENSEN: Okay. Any response by the  
3 state of county to the LILCO motion to admit revised  
4 testimony on the relocation centers will be due by 5:00  
5 o'clock, p.m., on Monday, since we're going to be  
6 traveling Tuesday morning.

7 Turning to Item B, the county's motion to admit a  
8 proposed modified Contention 88 and revised testimony  
9 on Contentions 85 and 88, does LILCO have an objection  
10 to that?

11 MR. CHRISTMAN: Our response is due today, and I'd  
12 like to make it now. LILCO is not going to object to  
13 the revision of Contention 88, based on, I must say,  
14 representations which we're relying on today, that that  
15 new contention or newly rewritten contention is limited  
16 to the criteria under NUREG II M1 and II M4, and  
17 nothing else.

18 And with that understanding, we don't object to  
19 having the contention revised.

20 CHAIRMAN LAURENSEN: And the testimony as well?

21 MR. CHRISTMAN: Yes. Now this is separate from any  
22 oral motions of strike we might want to make, but as  
23 far as having the paper in, that's fine.

24 We don't object.

25 CHAIRMAN LAURENSEN: All right. And again, the

1 staff has indicated it has no objection to this motion.  
2 And I assume the state has no objection?

3 MR. ZAHNLEUTER: This raises a question in my mind.  
4 The testimony on relocation centers, are there going to  
5 be oral motions to strike for that testimony?

6 CHAIRMAN LAURENSEN: I understood that was V-A.  
7 You're jumping ahead of my agenda here. I want to talk  
8 about motions to strike down there.

9 So we'll pick that up then, unless there's some  
10 reason to do it now.

11 MR. ZAHNLEUTER: No, no reason.

12 CHAIRMAN LAURENSEN: You don't have any objection  
13 to the county's motion?

14 MR. ZAHNLEUTER: No objection.

15 CHAIRMAN LAURENSEN: Okay. And the condition that  
16 Mr. Christman stated is agreed to by the county, is  
17 that correct?

18 MR. MCMURRAY: This question was put to Mr. Miller  
19 yesterday, who was speaking from a phone booth and did  
20 not have the testimony.

21 (Laughter.)

22 And he said, to the best of his recollection, that  
23 the contention was based on Subparts 1 and 4 of  
24 Criteria M of the NUREG 654.

25 That's the best representation I can make until Mr.

1 Miller gets out of that phone booth.

2 (Laughter.)

3 MR. CHRISTMAN: It sounds like we have no problem.  
4 However, if that representation on which we're relying  
5 turns out not to be correct, then we're going to have  
6 to reopen it.

7 CHAIRMAN LAURENSEN: Off the record.

8 (Whereupon, a brief break was taken.)

9 CHAIRMAN LAURENSEN: On V, the county's motion to  
10 reconsider the order concerning the schedule and page  
11 limitation on proposed findings of fact.

12 Before we get to the question of scheduling  
13 responses, the board had some observations on that  
14 matter, about discussing the merits of the county's  
15 pending objection to our schedule.

16 First, that if any party expects to wait until the  
17 hearing is complete or has even waited until today to  
18 begin preparing its proposed findings of fact, that  
19 party has an almost insurmountable obstacle ahead.

20 And this board will not delay a decision in this  
21 case to accommodate such an absence of advanced  
22 planning.

23 Secondly, if the parties can agree among themselves  
24 on adjustments to our announced schedule, or to a page  
25 limitation different than the one we set, we would be

1 more inclined to modify our order than if the parties  
2 merely stand on their prior positions.

3 Those are just observations by the board. Now  
4 we'll talk about the question of when the responses  
5 will be filed to the county's motion.

6 When will LILCO...when does LILCO propose to  
7 respond?

8 MR. CHRISTMAN: Well, I just laid eyes on it this  
9 morning. I gather it was transmitted yesterday, today,  
10 according to the note at the top of it.

11 The telecopter says 8/8/84, so...in any event, our  
12 response will be brief, and I suppose we can file it by  
13 next...how about Wednesday?

14 CHAIRMAN LAURENSEN: Mr. Bordenick?

15 MR. BORDENICK: I assume from the conversation that  
16 the board is talking in terms of written response. I'm  
17 wondering whether the board has considered hearing  
18 responses verbally next week on Long Island?

19 MR. CHRISTMAN: That is an idea that commends  
20 itself to me.

21 CHAIRMAN LAURENSEN: Is there any objection to  
22 that? I think New York has already filed its support  
23 of the county's motion.

24 Didn't we get that this morning?

25 MR. ZAHNLEUTER: Yes, that should have been served



1 today, and I received the county's motion for  
2 reconsideration by telecopier on the sixth.

3 CHAIRMAN LAURENSEN: We received ours on the sixth  
4 as well. In any event, is there any objection to  
5 presenting oral responses some time during next week's  
6 hearing, whenever we have a...

7 MR. CHRISTMAN: Sorry. We think it's a good idea.

8 CHAIRMAN LAURENSEN: All right. We will schedule  
9 that for next week, then, at the hearing at Haupag.  
10 Now we have another motion for summary disposition on  
11 the legal authority Contentions 1 through 10.

12 What ordinary...I mean, the rules of procedure  
13 provide for 20 days for the response on these. Does  
14 that present a problem, other than the usual problems  
15 for a response by any party?

16 MS. LETSCHE: Judge Laurenson, it does create the  
17 same problems that we've been talking about here. We  
18 have an awful lot going on in the next couple of weeks.

19 I have not personally laid eyes on this document  
20 yet, although I understand there's a lot to lay your  
21 eyes on in it.

22 And the 20-day time period is a problem for us. We  
23 would request additional time. I don't even have a  
24 calendar here in front of me to propose a date.

25 But I would say perhaps a 40-response time instead



1 of 20. I don't know what kind of date that comes to.  
2 Yes, I understand it's quite lengthy.

3 MR. CHRISTMAN: That's about 70 or 80 pages, the  
4 usual brief.

5 MR. BORDENICK: I think in this instance, we will  
6 agree in part with the county. I think it's going to  
7 require a little more than the usual 20 days.

8 The staff was thinking...I have a calendar here,  
9 but unfortunately, the print on it is so small I can't  
10 read it, even with my glasses.

11 (Laughter.)

12 MR. BORDENICK: The date I originally...this is  
13 1984. Okay. What day of the week is September 7th?

14 MR. CHRISTMAN: September 7th is Friday.

15 MR. BORDENICK: Is that a Friday? That's either  
16 the 7th or the 14th, probably, or somewhere in the  
17 middle of that week would probably be sufficient for  
18 the staff's purposes.

19 That's probably an extra...

20 MS. LETSCHE: Wait. That's November.

21 MR. BORDENICK: That's probably an extra ten to 12  
22 days over the 20 day period.

23 CHAIRMAN LAURENSEN: Since we have the question of  
24 the legal authority now squarely before us, I guess, on  
25 the LILCO motion for summary disposition, let me

1 inquire from the county and state what they or any one  
2 of them intends to file similar motions on these ten  
3 contingents.  
4

5 MS. LETSCHE: Judge Laurenson, the county's  
6 position is that, and I believe that we've stated it  
7 before, that this board does not have the jurisdiction  
8 to decide those issues, and moreover, because they are  
9 pending in more than one court right now, I believe,  
10 although I'm not positive, I'm not fully up on the  
11 status of all the court cases, it certainly is pending  
12 in state court, I know.

13 In light of that, in addition to the lack of  
14 jurisdiction which the county believes is precedent,  
15 would invade the principles of judicial comedy for this  
16 board to take action on those matters right now.

17 Moreover, it was the county's understanding that  
18 this board had itself taken the position that those  
19 were issues to be decided by the state court back in  
20 January when this issue was raised, and in fact, it was  
21 in response to that that the state and county filed  
22 those lawsuits in state court.

23 So separate and apart from the merits of those  
24 contentions, the county's position on the merits, I  
25 think, has been stated before, too, it's the county's  
belief that this court should not rule on those

1 contentions given their current...the fact that those  
2 issues are currently pending in state court.

3 CHAIRMAN LAURENSEN: I understand LILCO's motion,  
4 just having briefly reviewed it, is that assuming the  
5 county and state are correct, that New York law does,  
6 in fact, prohibit LILCO from doing the things you say  
7 they can't do, nevertheless, they're entitled to  
8 summary disposition of these contentions.

9 It doesn't present the question of state law for us  
10 to resolve; it's, I guess, essentially a question of  
11 federal preemption, begins with that and goes into some  
12 other matters.

13 You're entirely correct.

14 MS. LETSCHE: Excuse me. Excuse me, Judge  
15 Laurenson. As I said, I have not read those  
16 personally.

17 I have been told generally of their content and the  
18 question of what the state law provides as well as the  
19 federal preemption issue, however you want to describe  
20 that, is involved in the several lawsuits in which the  
21 county and LILCO and the state are now involved in both  
22 federal and state court.

23 And I can't speak for the specific merits of the  
24 motion. As I say, I haven't read them, but the issues  
25 raised, whether you're talking just the state issues or

1 a preemption issue, or whatever, those legal issues are  
2 in the courts now.

3 And those are, in the county's belief, the county's  
4 view, not issues that this board at this time should be  
5 making legal rulings on, because they are not pending  
6 in judicial form.

7 CHAIRMAN LAURENSEN: The question I asked was  
8 whether you intended to file any motions for summary  
9 disposition on these contentions.

10 MS. LETSCHE: I can't answer that, since I haven't  
11 read this particular document and I've not made a  
12 determination one way or the other as to what our  
13 response is going to be to it, other than what I've  
14 stated so far.

15 CHAIRMAN LAURENSEN: Well, is there any objection  
16 from LILCO to the request for 40 days to respond to the  
17 motion?

18 MR. CHRISTMAN: Well, I think it's excessive. I'd  
19 recommend 30, and so I suppose we object by ten days.

20 (Whereupon, a brief recess was taken.)

21 CHAIRMAN LAURENSEN: The board has considered the  
22 request and in light of the fact that the response to  
23 the motion for summary disposition on these legal  
24 authority contentions does not impact upon the rest of  
25 the case, we will grant the county's request for 40

1 days to respond. So the staff, of course, will have  
2 the same amount of time.

3 MR. BORDENICK: Does the board want a  
4 certain...I'll be glad to lend you my calendar.

5 MR. CHRISTMAN: We'll undertake the count and  
6 advise you in a few minutes, how about that?

7 CHAIRMAN LAURENSEN: I'm not sure what day it was  
8 served. I think there was a question about that.  
9 That's why I didn't set a date certain.

10 MR. CHRISTMAN: Well, we sent it out by Federal  
11 Express on this past Monday, which means it should have  
12 arrived every place on Tuesday, when Federal Express  
13 arrives.

14 CHAIRMAN LAURENSEN: We received ours on the 7th.  
15 Anyway, 40 days from the 7th will be...the 7th of  
16 September will be the date that all responses will be  
17 due to the LILCO motion for summary disposition on the  
18 legal authority contentions.

19 I mean August. I'm looking at September. The 17th  
20 of September. Okay. September 17th it will be.

21 Now this brings us to what we received this morning  
22 by telecopier, the New York motion to acquire  
23 subpoenas that are for the hearing on August 22nd, is  
24 that correct? Of Dr. Suprianni.

25 MR. MCMURRAY: I believe it's the 22nd that they're



1 supposed to come up.

2 MR. CHRISTMAN: That's correct.

3 CHAIRMAN LAURENSEN: The state filed the motion  
4 this morning. I don't know whether LILCO has even  
5 received this yet.

6 Well, I think the best way to handle this is also  
7 to have it done orally next week during the course of  
8 the hearing up in rluppauge, and expect to hear the  
9 presentations of all parties at some time during the  
10 week.

11 I can't indicate precisely the day and time, unless  
12 that becomes important. We will then rule from the  
13 bench on this motion. Is there any objection to that  
14 procedure?

15 MR. CHRISTMAN: None.

16 MR. MCMURRAY: None.

17 CHAIRMAN LAURENSEN: Okay. Other than items A, B,  
18 and C under V, are there any other pending matters that  
19 we have overlooked or failed to discuss today that need  
20 resolution before next Tuesday?

21 Okay. The items A and B, I guess, go together, and  
22 I think that the last time we had discussed the  
23 questions of motions to strike, it was agreed that from  
24 here on out, in order to keep the hearing moving, we  
25 would entertain these motions to strike orally.

1 At the time, the witness panel was called to  
2 testify. However, any party wishing to file such a  
3 motion to strike would give the board a written summary  
4 or some sort of a brief description of the areas in  
5 which they intended to strike the testimony so we could  
6 direct our attention to it in advance.

7 That was not mentioned in this scheduling letter of  
8 July 31st, but is that still the understanding of all  
9 the parties, the way we'll proceed from here on out for  
10 the next three weeks?

11 MR. CHRISTMAN: That's our understanding, with the  
12 addition that the parties would exchange their little  
13 summaries, I believe.

14 CHAIRMAN LAURENSEN: That's correct.

15 MR. MCMURRAY: That's our understanding.

16 CHAIRMAN LAURENSEN: Okay. Now, on cross-  
17 examination plans, I recall that we had required that  
18 the cross-examination plans for the FEMA witnesses  
19 would be filed with us on Tuesday morning before those  
20 witnesses started to testify.

21 Now the parties have adjusted the schedule  
22 somewhat, that you put some other witnesses ahead of  
23 them.

24 But can we have an agreement that the parties will  
25 file their cross-examination plans for all testimony

1 scheduled on the Tuesday morning of the week in  
2 which the testimony is scheduled?

3 Is that clear? Based upon your July 31st joint  
4 submission again.

5 MR. CHRISTMAN: That's fine.

6 MR. MCMURRAY: Judge Laurenson, is that for the  
7 next two weeks?

8 CHAIRMAN LAURENSEN: Yes.

9 MR. MCMURRAY: Until we cover ... it would cover  
10 the entire week?

11 CHAIRMAN LAURENSEN: As I ...

12 MR. MCMURRAY: Issued on a Tuesday?

13 CHAIRMAN LAURENSEN: Yes. As I recall, there are  
14 only two more weeks of testimony until we get to the  
15 sua sponte strike issues on the 28th.

16 So this would apply to the next two weeks.

17 MR. MCMURRAY: We have no problem with that.

18 CHAIRMAN LAURENSEN: We will order that plan to be  
19 followed, and again, we'd ask that the parties exchange  
20 with each other the time estimates.

21 The last item that we had on our agenda was the  
22 daily schedule for the remainder of August. Is there  
23 any reason to go over that day by day, in terms of what  
24 the parties have agreed to concerning the various  
25 discovery matters that have been put into the schedule

1 as well as the dates for hearing?

2 Or is this all pretty well resolved by now?

3 MR. MCMURRAY: I think that the schedule that the  
4 parties sent to the board speaks for itself.

5 MR. CHRISTMAN: And was negotiated after an  
6 excruciating amount of effort.

7 (Laughter.)

8 MR. CHRISTMAN: So I don't think we even want to  
9 discuss that again.

10 CHAIRMAN LAURENSEN: There were some matters where  
11 there was not total agreement, as I recall. Have these  
12 been resolved, or are they not of any great  
13 significance?

14 MR. BORDENICK: There is one that comes to mind,  
15 and I have meant to discuss it with the county, and I  
16 haven't yet done so.

17 That's the question of whether the staff witnesses  
18 on contention 11, I always forget the numbers, were  
19 going to go separately or as a panel.

20 Frankly, I really have no great preference, so  
21 whatever suits the other parties will be fine with the  
22 staff.

23 I can take it up with the county separately. I  
24 don't think we need to burden the board with it  
25 unless...

1 CHAIRMAN LAURENSEN: That isn't scheduled until the  
2 week of the 21st anyway.

3 MR. BORDENICK: Correct.

4 CHAIRMAN LAURENSEN: So I think you'll have ample  
5 time to see all the lawyers next week and to resolve  
6 that matter.

7 Is there anything else that should be brought up  
8 now that has to be resolved before next Tuesday?

9 MR. BORDENICK: Judge Laurenson, I don't have  
10 anything that needs to be resolved. I just wanted to  
11 indicate something I should have indicated at the  
12 outset, and that is that word, of course, get notice to  
13 Mr. Glass, FEMA counsel, yesterday, of this conference.

14 He called me and asked me to tell the board that he  
15 had a previous appearance scheduled today in Albany and  
16 therefore couldn't be here.

17 And I will, of course, undertake to get word to him  
18 of what's transpired here today to the extent that it  
19 affects FEMA.

20 CHAIRMAN LAURENSEN: In that case, I would ask you  
21 to communicate to him specifically that the ruling that  
22 we made concerning the FEMA witness panels.

23 MR. BORDENICK: That is first on my list.

24 MR. MCMURRAY: Judge Laurenson, I think there's  
25 just one other point of clarification, and that is, we



1 don't know whether the staff is going to be offering  
2 any witnesses on the strike issues, or FEMA.

3 MR. BORDENICK: The staff will. I can't speak for  
4 FEMA, because I haven't discussed it with them, but I  
5 doubt seriously that they will, but I don't rule that  
6 out at this point.

7 CHAIRMAN LAURENSEN: Anything else before we close  
8 this Conference of Counsel? All right. The Conference  
9 of Counsel is closed.

10 We will reconvene the hearing at about 10:00 a.m.  
11 next Tuesday in Hauppauge.

12 (Whereupon, the meeting was adjourned at 3:45 p.m.)  
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CERTIFICATE OF PROCEEDINGS

This is to certify that the attached proceedings  
before the NRC COMMISSION

In the matter of:

CONFERENCE OF COUNSEL, SHOREHAM/EMERGENCY PLANNING

Date of Proceeding: Wednesday, August 8, 1984

Place of Proceeding: Bethesda, Maryland

were held as herein appears, and that this is the  
original transcript for the file of the Commission.

GEORGIA PINKARD

\_\_\_\_\_  
Official Reporter

Georgia Pinkard/ddr  
Official Reporter - Signature

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

ATOMIC SAFETY AND LICENSING BOARD

Before Administrative Judges  
~~James A. Laurenson, Chairman~~  
Dr. Jerry R. Kline  
Mr. Frederick J. Shon

In the Matter of LONG ISLAND LIGHTING COMPANY (Shoreham Nuclear Power Station, Unit 1)	}	Docket No. 50-322-OL-3 (Emergency Planning Proceeding)  August 8, 1984
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MEMORANDUM AND ORDER  
CONCERNING DEPOSITION OF FRANK N. RASBURY

On July 30, 1984 LILCO filed revised testimony concerning relocation centers. This revised testimony is sponsored by a panel of witnesses including Frank M. Rasbury, Executive Director of the Nassau County Chapter of the American Red Cross. Prior to July 30, 1984, LILCO had not disclosed its intent to call Mr. Rasbury as a witness in this matter. On July 31, 1984, counsel for Suffolk County requested the deposition of Mr. Rasbury for August 3, 1984. On August 1, 1984, counsel for LILCO stated that LILCO would not voluntarily produce Mr. Rasbury for a deposition.

On August 3, 1984, Suffolk County filed a Motion to Compel LILCO to Produce Frank M. Rasbury, a LILCO Witness, for Deposition. In that motion, the County presented an alternative motion that Mr. Rasbury be

"stricken from LILCO's witness panel and that all testimony sponsored by him be similarly stricken." Motion to Compel at 1. The essence of the County's motion is that LILCO significantly revised the manner in which evacuees are to be relocated and the County has a need to discover the facts underlying the witness's opinion. The County asserts that it acted promptly and that LILCO's last minute notification of Mr. Rasbury's vacation plans "are a contrivance to keep the County from obtaining discovery." Motion to Compel at 9. New York supports Suffolk County's motion.

On August 6, 1984, LILCO filed its Answer Opposing Suffolk County's Motion to Compel. LILCO argues that this motion should be denied for the following reasons: (1) we have already denied as untimely LILCO's request to depose two New York State officials on this issue, thus our denial of this request would place Suffolk County at no greater disadvantage than LILCO has already incurred; (2) the instant situation of a new witness being produced shortly before hearing "is of the County's own making" because on two prior occasions, the State and County drafted letters stating that their facilities were not available as relocation centers; and (3) the County has not justified its need for this deposition and there is no compelling reason why the County cannot develop the facts it needs at the hearing.

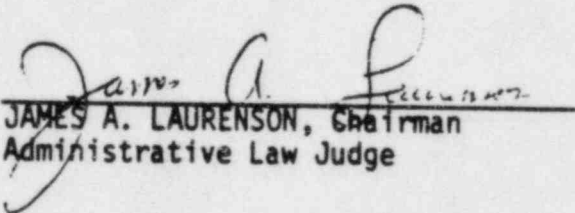
We find that LILCO's arguments are unpersuasive. First, the fact that LILCO's discovery request was denied as untimely is irrelevant here where LILCO does not assert untimeliness as a defense. Indeed, we find that Suffolk County acted promptly in this instance. Second, the issue of the "County's own making" is also irrelevant to a request to depose a

witness prior to hearing. Finally, one of the purposes of discovery is to eliminate a "fishing expedition" at trial. To that end, a deposition should expedite the hearing.

In conclusion, we grant Suffolk County's request to take the deposition of Frank N. Rasbury at a time to be agreed upon by the parties.

IT IS SO ORDERED.

ATOMIC SAFETY AND  
LICENSING BOARD

  
JAMES A. LAURENSEN, Chairman  
Administrative Law Judge

Bethesda, Maryland