ORIGINAL

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of:

CONFERENCE OF COUNSEL

SHOREHAM/EMERGENCY PLANNING

OPEN MEETING

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Date: Wednesday, August 8, 1984

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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)

(Emergency Planning Procedure)

Docket No. 50-322-OL-3

August 8, 1984

ATTENDEES:

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

PROCEEDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

We were in the process of drafting a written

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

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

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

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

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

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

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

We want to emphasize to all parties that the so-

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

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

We want to emphasize to all parties that the so-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN LAURENSON: Mr. Bordenick?

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

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

He will address this particular matter.

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

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

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

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

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

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

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

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

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

CHAIRMAN LAURENSON: Mr. Iwin?

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

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

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

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

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

We haven't discussed Mr. Zahnleuter's discovery

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

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

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

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

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

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

I mean, unless they're talking about a totally

different kind if impairment that I think we're talking about.

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

(Whereupon, a short recess was taken.)

CHAIRMAN LAURENSON: The board had discussed and considered LILCO's stipulation and the arguments that we just heard.

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

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

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

And I think the appropriate thing to do at this

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

(Whereupon, a brief recess was taken.)

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

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

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

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

The geography of the situation is regrettable but

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

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

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

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

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

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

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

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

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

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

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

The second constellation of issues...

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

thinks it's going to function.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN LAURENSON: Isn't issue 3 limited to the time during a strike?

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

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

MR. IRWIN: Fine.

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

CHAIRMAN LAURENSON: You could have saved that one.

(Laughter.)

MR. IRWIN: I can try again.

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

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

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

resolution of the issue.

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

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

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

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

Mr. Zahnleuter, did you have position on this?

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

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

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

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

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

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

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

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

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

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

of a strike."

CHAIRMAN LAURENSON: No, we're talking about a radiological emergency occuring during a strike. That's the whole focus of these contentions, of these issues, I should say.

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

Just a moment, please.

(Whereupon, a brief recess was taken.)

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

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

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

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

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

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

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

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

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

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

And since the board has indicated that that is not

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

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

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

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

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

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

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

CHAIRMAN LAURENSON: You keep saying 15.

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

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

CHAIRMAN LAURENSON: What does this do as far as the depositions for next Monday?

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

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

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

CHAIRMAN LAURENSON: All right.

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

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

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

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

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

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

MR. HASSELL: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I would define significant as probably more than a week.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAIRMAN LAURENSON: Anything else, Mr. Zahnleuter, on this question?

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

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

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

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

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

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

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

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

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

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

Is that your position?

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

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

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

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

I think we have in that respect.

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

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

CHAIRMAN LAURENSON: Okay.

MS. LETSCHE: Yes.

CHAIRMAN LAURENSON: All right, and the staff doesn't care either way.

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

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

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

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

hearing or these issues.

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

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

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

Or do they intend to file any such objection?

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

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

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

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

MS. LETSCHE: Yes, yes.

CHAIRMAN LAURENSON: Is there any objection to that request?

MR. CHRISTMAN: No.

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

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

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

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

CHAIRMAN LAURENSON: And the testimony as well?

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

We don't object.

CHAIRMAN LAURENSON: All right. And again, the

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

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

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

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

MR. ZAHNLEUTER: No, no reason.

CHAIRMAN LAURENSON: You don't have any objection to the county's motion?

MR. ZAHNLEUTER: No objection.

CHAIRMAN LAURENSON: Okay. And the condition that Mr. Christman stated is agreed to by the county, is that correct?

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

(Laughter.)

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

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

Miller gets out of that phone booth.

(Laughter.)

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

CHAIRMAN LAURENSON: Off the record.

(Whereupon, a brief break was taken.)

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

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

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

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

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

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

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

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

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

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

CHAIRMAN LAURENSON: Mr. Bordenick?

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

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

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

Didn't we get that this morning?

MR. ZAHNLEUTER: Yes, that should have been served

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

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

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

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

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

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

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

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

But I would say perhaps a 40-response time instead

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

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

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

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

(Laughter.)

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

MR. CHRISTMAN: September 7th is Friday.

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

That's probably an extra...

MS. LETSCHE: Wait. That's November.

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

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

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

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

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

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

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

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

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

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

You're entirely correct.

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

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

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

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

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

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

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

CHAIRMAN LAURENSON: Well, is there any objection from LILCO to the request for 40 days to respond to the motion?

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

(Whereupon, a brief recess was taken.)

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

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

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

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

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

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

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

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

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

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

supposed to come up.

MR. CHRISTMAN: That's correct.

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

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

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

MR. CHRISTMAN: None.

MR. MCMURRAY: None.

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

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

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

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

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

CHAIRMAN LAURENSON: That's correct.

MR. MCMURRAY: That's our understanding.

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

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

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

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

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

MR. CHRISTMAN: That's fine.

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

CHAIRMAN LAURENSON: Yes.

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

CHAIRMAN LAURENSON: As I ...

MR. MCMURRAY: Issued on a Tuesday?

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

So this would apply to the next two weeks.

MR. MCMURRAY: We have no problem with that.

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

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

as well as the dates for hearing?

Or is this all pretty well resolved by now?

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

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

(Laughter.)

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

CHAIRMAN LAURENSON: There weree some matters where there was not total agreement, as I recall. Have these been resolved, or are they not of any great significance?

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

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

Frankly, I really have no great preference, so wnatever suits the other parties will be fine with the staff.

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

CHAIRMAN LAURENSON: That isn't scheduled until the week of the 21st anyway.

MR. BORDENICK: Correct.

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

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

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

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

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

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

MR. BORDENICK: That is first on my list.

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

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

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

CHAIRMAN LAURENSON: Anything else before we close this Conference of Counsel? All right. The Conference of Counsel is closed.

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

(Whereupon, the meeting was adjourned at 3:45 p.m.)

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	Docket No. 50-322-OL-3
LONG ISLAND LIGHTING COMPANY	(Emergency Planning Proceeding)
(Shoreham Nuclear Power Station, Unit 1)	August 8, 1984

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. LAURENSON, Chairman
Administrative Law Judge

Bethesda, Maryland