

ORIGINAL

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

In the matter of:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station
Unit 1)

Docket No. 50-322-OL-3

Location: Hauppauge, New York

Pages: 14,504-14,688

Date: Thursday, August 16, 1984

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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 In the Matter of: :
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 LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL-3
 :
 (Shoreham Nuclear Power Station, : (Emergency Planning)
 Unit 1) :
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Court of Claims
State of New York
State Office Building
Room 3B46
Veterans Memorial Highway
Hauppauge, New York 11787

Thursday, August 16, 1984

The hearing in the above-entitled matter resumed
at 9:00 a.m., pursuant to recess,

BEFORE:

JAMES A. LAURENSEN, ESQ., Chairman
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

DR. JERRY KLINE, Member
Atomic Safety and Licensing Board
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Washington, D. C. 20555

DR. FREDERICK SHON, Member
Atomic Safety and Licensing Board
U. S. Nuclear Regulatory Commission
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APPEARANCES:

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On Behalf of the State of New York:

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On Behalf of FEMA:

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Federal Emergency Management Agency

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WITNESSES:

CROSS

Thomas E. Baldwin)		14,507
Roger B. Kowieski)	Resumed	
Philip McIntire)		
Joseph H. Keller)		

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P R O C E E D I N G S1
2 Whereupon,

3 THOMAS E. BALDWIN

4 ROGER B. KOWIESKI

5 PHILIP MC INTIRE

6 JOSEPH H. KELLER

7 resumed the stand, and having been previously duly sworn,
8 were further examined and testified as follows:9 JUDGE LAURENSEN: Let the record show the hearing
10 is now resumed.

11 Mr. Miller?

12 CROSS-EXAMINATION (Resumed)

13 BY MR. MILLER:

14 Q Gentlemen, if you will turn to page 106 of your
15 testimony, I just had a couple of other questions I wanted to
16 ask about the free play for decisionmaking aspects of a
17 training program.18 Would you agree with me that free play for
19 decisionmaking should include provisions for allowing
20 participants at all levels of the emergency response
21 organization to exercise participant discretion?22 A (Witness McIntire) You mean all levels of the
23 emergency response organization?

24 Q Yes, sir.

25 A That would be desirable, yes.

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1 Q And by all levels, Mr. McIntire, are you referring
2 to everyone in the LILCO situation from the Director of
3 LILCO Response, down to what I will call field personnel,
4 traffic guides, people out in the field carrying out the
5 emergency functions?

6 A In theory that would be desirable. But of course
7 there is a pragmatic consideration in designing exercise
8 objectives of scenarios.

9 A (Witness Keller) In addition, I think we should
10 be clear that we are not implying that if procedures are
11 involved, that the individual participant should be allowed
12 discretion in not following a procedure. As you get lower,
13 as you move further away from the top decisionmaking
14 command and control structure, many of these functions are
15 covered by rather abrupt procedures, by detail.

16 For example, as we discussed yesterday, the
17 150 count-per-minute trigger level at which time if a thyroid
18 contamination is found the procedure is that this individual
19 be sent to the hospital, I don't think we are implying that
20 someone ought to have the discretion to say, well, it is okay
21 to go to 180 or 250 or whatever.

22 But with that understanding, I agree with
23 Mr. McIntire's comment.

24 A (Witness McIntire) Basically, the point I was
25 trying to make was that participant exercises should not

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1 have items in the exercise scenario known beforehand. It
2 should be completely open and actually exercise their
3 capability to respond to emergency situations.

4 Q Would you agree with me that free play for
5 decisionmaking includes confronting the participants in a
6 drill or exercise with surprise situations?

7 A You are using the term "free play for decisionmaking,"
8 and perhaps we ought to differentiate that from free play of
9 the exercise. Decisionmaking is usually done at the higher
10 levels of the organization and usually the best procedure in
11 emergency drills is to have people at the lower levels
12 communicate up when they are confronted with situations that
13 they are not equipped to deal with immediately for advice
14 and assistance in decisionmaking as opposed to them always
15 making decisions on their own.

16 So, that is one of the things that we look to,
17 also, that the decisionmaking is made at the appropriate
18 level.

19 Q But, Mr. McIntire, you can have decisionmaking
20 at any level of the emergency response organization,
21 couldn't you? For example, you have a traffic guide in
22 the LILCO plan who is out of his traffic post during a
23 drill, and you inform that traffic guide that, assume
24 now there is an accident at your intersection, a tree has
25 fallen across the road, something of that sort. And you

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1 would want to see in that situation what the traffic guide
2 would do to react to the event.

3 Isn't that correct?

4 A Certainly.

5 Q The last sentence of your answer to Contention
6 44.E talks about, again, the federally evaluated exercise.
7 And you say that the "offsite objective of such an
8 exercise must be reviewed and approved by FEMA."

9 Do you see that?

10 A (Witness Kowieski) Yes, we do.

11 Q I gather from the conversations we have had
12 earlier this week, that at this time you have not determined
13 whether the offsite objectives of any exercise for Shoreham
14 will include free play for decisionmaking, because at this
15 time you have reviewed no such exercise --

16 MR. GLASS: This has been gone into a number
17 of times. It has been asked and answered.

18 JUDGE LAURENSEN: We are plowing this ground
19 again, about the fact that there is no such exercise
20 schedule.

21 I think that has been established beyond any
22 question.

23 MR. MILLER: Let me just respond, maybe we can
24 clear this up once and for all.

25 Earlier this week we had questions to the

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1 witnesses regarding discussions concerning the scheduling
2 of an exercise for Shoreham. Maybe I could just ask another
3 question that is a little bit broader, and I think that the
4 information is relevant.

5 BY MR. MILLER:

6 Q Gentlemen, to your knowledge, are there any
7 ongoing discussions of any kind regarding exercises at
8 the Shoreham plant? Not just the scheduling of the
9 exercise, but regarding exercises, federally FEMA-graded
10 exercise for the Shoreham plant.

11 A (Witness McIntire) Not to my knowledge.

12 Q The rest of the panel has no information contrary
13 to Mr. McIntire's, correct?

14 A (Witness Kowieski) That's correct.

15 Q Looking at Contention 44.F, your answer 128.

16 Gentlemen, when you were addressing Contention
17 44.F, did you assume that the contention only addresses a
18 FEMA-graded exercise for the Shoreham plant?

19 A One second.

20 (Pause)

21 Q Let me see if I can make it more specific.

22 The contention refers to critique and evaluation
23 of training exercises.

24 A (Witness Keller) That's correct.

25 Q It also talks about -- it says that the plan fails

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to provide adequate means for evaluating observer and participant comments.

Did you assume that this contention addresses only the issue of a FEMA-graded exercise?

1 (McIntire) Contention 44.F begins: Although the LILCO plan
2 asserts that official observers from Federal, State or local
3 governments will be on hand to evaluate and critique an annual
4 exercise ... so, when you use, 'an annual exercise,' we
5 believe that, plus the fact that Federal, State and local
6 governments are mentioned, that it is probably referring to a
7 FEMA evaluated exercise.

8 Q The next sentence, Mr. McIntire, the Contention,
9 in addition, although the plan describes a proposed procedure
10 for evaluating observer and participant comments, post
11 exercise/drill critiques will be performed primarily by
12 LILCO, and evaluations of critiques and decisions as to
13 necessary actions will be made by LILCO personnel.

14 Now, did you assume that also went to the issue
15 of a FEMA graded exercise?

16 A (Witness Keller) I think that the testimony
17 that we filed indicates that the FEMA graded exercise will
18 be evaluated by FEMA. LILCO may, indeed, also evaluate
19 the FEMA graded exercise, but we are concerned, and I guess
20 the controlling evaluation, in our opinion would be the FEMA
21 evaluation, which would be reported in a post-exercise
22 assessment report.

23 Q Does your testimony address the issue of LILCO's
24 drill and exercises, the problems which could arise with
25 LILCO evaluating its own drills and exercises?

1 A As Mr. McIntire pointed out, when we read the
2 contention, since it talked about the annual exercise and
3 talked about observers from Federal, State and local
4 governments, we assumed that this was talking about the
5 annual Federally evaluated exercise.

6 Q And your answer goes to a FEMA graded exercise
7 only.

8 A That is correct.

9 Q Assume with me for the moment, gentlemen, or
10 let's just talk about the issue of a LILCO drill or exercise,
11 and the evaluation of such an exercise or drill by LILCO and
12 its personnel, in that case, do you believe that the plan
13 adequately provides for evaluation and critiques of the drill
14 or exercise?

15 A In my opinion, yes. It is generally -- it is a
16 general practice that the preparer of a plan, whether it be
17 a State, or County, or in this case, LILCO, in addition to the
18 Federally evaluated exercise would have, as part of its own
19 procedures, internal tests and drills, and in every case
20 these internal tests, drills, exercises are evaluated
21 internally.

22 Q Mr. Keller, have you made any decisions regarding
23 whether LILCO has the expertise or the objectivity to evaluate
24 its own drills and exercises?

25 MR. GLASS: I object. This is getting to a

1 question of credibility, which is outside the scope of this
2 particular contention, unless Mr. Miller is willing to
3 rephrase his question.

4 MR. MILLER: I am not willing to rephrase the
5 question. The question is an appropriate question.

6 MR. GLASS: When you are talking about objectivity,
7 I think it has something to do with credibility of LILCO, and
8 it is an area that I do not think is appropriate --

9 MR. MILLER: Judge Laurensen, let me refer the
10 Board to the contention. The very words of the Contention.
11 LILCO, however, will not be able to critique adequately
12 its own plan, including the exercises or drills conducted
13 under the plan, or to evaluate and/or act upon such critiques
14 due to its lack of expertise and objectivity.

15 That is my question.

16 JUDGE LAURENSEN: Objection is overruled.

17 WITNESS MILLER: We feel that the internally
18 conducted drills and exercises are part of a training program.
19 That the utility should have as an on-going effort, the
20 bottom line is how well do these people, these emergency
21 workers, perform in the Federally evaluated exercise. And
22 we look at these other drills, in a way, as preparation for
23 this Federally evaluated exercise.

24 LILCO prepared the plan. I have a problem in
25 understanding how it is questionable that the preparer of

1 a plan cannot revise the plan. I don't understand how that
2 disconnect occurs.

3 BY MR. MILLER: (Continuing)

4 Q Let me ask my question again, Mr. Keller. My
5 only question is: Have you at this time evaluated the
6 ability of LILCO -- whether LILCO has the expertise and
7 the objectivity to evaluate its own training drills and
8 exercises?

9 A We have not gone, with the exception of the
10 spot check to the training materials and looking at the
11 brochure, which we have already discussed, we have not
12 done anything other than plan review.

13 Q Is it fair to say, gentlemen, that during a
14 FEMA graded exercise, the evaluation made of the plan's
15 adequacy is one that goes to the organization -- the LERO
16 organization, or any other response organization, as a whole
17 rather than to the abilities of specific individuals?

18 A That is not correct.

19 Q During a FEMA graded exercise, FEMA evaluates
20 the specific individual's abilities?

21 A As part of the exercise, that is correct.

22 A (Witness McIntire) To be perfectly complete
23 in the answer, we have stated a number of times that we will
24 not evaluate everyone's performance. On some basis, we will
25 do only a sampling. At the higher levels, we make every effort

1 to evaluate fully the top management officials, and then
2 other implementing organizations on a sampling basis.

3 Q I gather, Mr. McIntire, when you evaluate
4 response organizations performance in a FEMA graded exercise,
5 you may see some individuals who do not perform to what you
6 consider to be an adequate level, and yet you can reach the
7 judgment that the response as a whole is adequate?

8 A (Witness Kowieski) No, that is not true. The
9 point Mr. McIntire is making, that not every individual
10 that is part of overall emergency reponse will participate
11 in the exercise.

12 To give you an example, when you have three
13 hundred bus drivers, not all three hundred bus drivers will
14 participate in the exercise. However, it will select
15 certain number of bus routes, let's say, five, and every
16 single individual, every single bus driver, would be
17 evaluated and rated, and this applies to other emergency
18 response personnel.

19 Q My question wasn't a good question, Mr. Kowieski.
20 Let's take your hypothetical. You have three hundred bus
21 drivers, but FEMA during an exercise, randomly selects five
22 bus routes that they are going to ride on, and they are going
23 to observe the performance of five bus drivers. If you
24 observe one of the five bus drivers not performing adequately,
25 how would you reach a judgment concerning the overall

1 capability of bus drivers in that response organization?

2 A Depends what kind of problem was identified.
3 If bus driver wouldn't know the route where he or she is
4 going, this would be a problem.

5 If bus driver, for instance, missed one of the
6 turns, we would consider this as a problem. However, would
7 not identify it as a major problem.

8 As a matter of fact, there is a guidance
9 policy from FEMA Headquarters Office, which states you have
10 a Category A deficiencies. The deficiencies that would
11 impede effective response. And also Category B deficiencies,
12 in other words the deficiencies that would not affect the
13 public health and safety. However, where improvements are
14 needed.

15 Q Are the Category A deficiencies the type of
16 serious deficiencies referred to on page 107?

17 A That is exactly correct.

18 Q And if you see a Category A deficiency, does
19 that automatically require there be some follow up evaluation
20 by FEMA?

21 A. There is a schedule that within certain time
22 frames that FEMA and emergency response organizations, or
23 organization, must meet. We, FEMA, would have to provide
24 post-exercise assessment to the State or utility, and NRC,
25 within thirty days, and then within certain time period the

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State or utility would be required to provide FEMA with a
schedule of remedial action.

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2 And then as a follow up the State or utility
would be required to schedule remedial exercise.

3 Q Is the remedial exercise, Mr. Kowieski, would
4 that kind of an exercise be as large in scope as the
5 initial exercise?

6 A The remedial exercise would focus on remedial
7 action, wouldn't necessarily be to the same level, to the
8 same extent as the full scale annual exercise. That's why
9 we call it remedial exercise.

10 (Witness Keller) I would like to add just one
11 thing. As our prefiled testimony indicates, we have used
12 the word "annual" several times, and the contention used
13 the word "annual."

14 The rules -- the previous rules under which
15 FEMA had operated, the Draft 350, called for an annual
16 Federally-observed exercise. The current rules for a
17 Federally-observed exercise every two years. We are going
18 along with the word "annual" because that's what is in the
19 documentation. But, really the FEMA rules call for a full
20 scale exercise every two years rather than every year.

21 Q Mr. Kowieski, going back to this idea of the
22 remedial exercise, the remedial exercise, the purpose would
23 be to focus on those aspects of the initial exercise which
24 FEMA judged to be this Category A type deficiencies?

25 A (Witness Kowieski) That's correct.

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2 Q With respect to the correction of deficiencies,
3 Mr. Kowieski, does FEMA require deficiencies noted in a
4 RAC report to be resolved prior to the holding of the
5 initial Federal-graded exercise?

6 A I would say the majority of deficiencies. We
7 would expect the majority of deficiencies would be corrected
8 prior that we would go to the exercise.

9 When I say majority, I would consider the major --
10 to assure the plan is complete, the plan could be carried
11 out, if we would find out that, for instance, one of
12 deficiencies would be lack of letters of agreement. That's
13 deficiency, but we would still go ahead with the exercise.
14 It would be one or two letters of agreement missing and
15 company, organization that is designated in the plan would
16 participate in the exercise, would agree to participate in
17 the exercise, would go ahead with exercise.

18 (Witness McIntire) I think to be entirely clear
19 on this matter, we had better be sure that we are focusing
20 either on the Shoreham or we are talking about how it has
21 historically been done, because it has been different because
22 of the time frames.

23 In other words, in other sites we have held
24 exercise with the plan in a less complete form because we
25 required the exercise annually. Here at Shoreham where we
have no plans for an exercise at this point in time, and the

#3-3-SueT 1

2 plan is under active revision, we will probably see the
3 plan here at Shoreham in a more advanced stage than we have
historically at other sites in Region II.

4 Q Does that mean, Mr. McIntire, with respect to
5 Shoreham you would expect to see all deficiencies found by
6 the RAC Committee to be resolved prior to the time of an
7 exercise?

8 A That would certainly not be a requirement. It
9 would be desirable.

10 Q So, you would then say with respect to Shoreham,
11 you agree with Mr. Kowieski that you would expect to see
12 a majority of the deficiencies resolved?

13 A Again, I agree with that as a general statement
14 since we have no exercise date scheduled, then we are get-
15 ting speculative. But based on, you know, the general time
16 frames that is required to plan for an exercise and every-
17 thing else, and the schedule that we have seen in the past
18 for plan revision, I would agree with that statement.

19 Q Is there any way -- maybe there isn't, Mr. McIntire -
20 to tell me how it is that FEMA decides which deficiencies
21 would not have to be resolved prior to the holding of the
22 exercise?

23 I mean, is there a criteria of some sort?

24 MR. GLASS: Judge Laurenson, I've let this go
25 on quite awhile. I think this is quite far beyond the scope

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of the contentions at this point.

2 JUDGE LAURENSEN: I think we are really getting
3 into the exercise part of FEMA's responsibility which every-
4 one I think has agreed is not germane to the case at this
5 point. And the question of the evaluation of the LILCO
6 plan is removed from the current questions of the precise
7 details of the exercise.

8 The objection is sustained.

9 BY MR. MILLER: (Continuing)

10 Q Gentlemen, would you look at Page 108 of your
11 testimony, Contention 98?

12 We have discussed a lot of this already, Mr.
13 Keller, yesterday.

14 A (The witnesses are complying.)

15 Q Let me ask you this question, Mr. Keller. The
16 question is asked: Does the plan adequately provide for
17 initial training and retraining of organizations that will
18 be required to take actions.

19 And the answer is given all in terms of, according
20 to LILCO records and according to statements made by LILCO
21 personnel.

22 So, my question to you is: Does the plan ade-
23 quately provide for initial training and retraining of these
24 organizations?

25 A (Witness Keller) Yes.

#3-5-SueT1

Q And what does the plan provide?

2 A The plan provides that LILCO will offer to train
3 these organizations which are expected to take actions
4 during an incident, whatever training those particular
5 organizations would desire to have.

6 That's my recollection of basically the wording
7 of the plan.

8 Since these are not the support organizations
9 which are required to have letters of agreement and all
10 that, that appears to be sufficient.

11 Q So, the plan says LILCO will offer training to
12 these organizations, and that would go to the issue of
13 initial training, in your opinion, correct?

14 A That's correct.

15 Q Now, what about periodic training? Yesterday
16 we talked about organizations that are support organizations
17 which you say, in your opinion, once you have the letters
18 of agreement there is an obligation of the support organiza-
19 tion to tell LILCO we need retraining or more training for
20 our people.

21 What about organizations that you say are not
22 support organizations and would not have letters of
23 agreement? How does LILCO propose to give them periodic
24 retraining?

25 A The plan -- my recollection of the plan says that

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LILCO will offer whatever training these organizations desire. It doesn't say anything about schedule.

If an organization does not have a letter of agreement, all right, is just expected to take an action and decides that it wants to have some training, the plan provides that LILCO will offer this training. If, on the other hand, the organization decides it does not want to be trained, either initially or in terms of retraining, the plan says it's -- well, nothing will happen.

You cannot force people to accept training.

Q Mr. Keller, my question is: Do you assume, as you do with support organizations that have entered into letters of agreement, that organizations required to take actions during an incident have the obligation of telling LILCO that they need retraining?

A Quite to the contrary. The plan, I think, is rather specific. And it says that LILCO will offer training to these organizations in whatever manner these organizations desire. Based on the representations to me at the spot check, LILCO has made initial contacts with these organizations.

I have no reason to believe that LILCO will stop talking to these people once any initial training that these organizations decide they would like to have would have been accomplished.

#3-7-SueT 1

2 Q So, your assumption is that LILCO will at some
3 point periodically, however that is defined, continue
4 to make such training available?

5 A That is correct. The plan, as I read it, is
6 not prohibitive of continuing this training after the
7 initial offer.

8 Q And again, Mr. Keller, to make sure we are all
9 working in the same frame here, what your testimony is say-
10 ing, I take it, is that the plan, in your opinion, provides
11 for -- makes provision for providing training to these
12 organizations.

13 You are not saying that training has been
14 provided or that that training has been adequate?

15 A That is correct.

16 Q Will you look please at Contention 99, gentlemen,
17 on Page 109?

18 A (The witnesses are complying.)

19 Q The first issue, Contention 99.C, goes to the
20 qualifications of training instructors, correct?

21 A That is correct.

22 Q The question posed to you gentlemen talks about
23 the training of LILCO personnel by instructors. Did you
24 assume that the contention only addresses the training of
25 LILCO personnel?

A Not necessarily.

#3-8-SueT 1

2 Q The contention does state, doesn't it, in fact
it specifically says both LILCO and non-LILCO personnel.

3 Let me just ask, would your answer be any
4 different?

5 A No, it would not.

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1 Q Do you have Contention 99.C gentlemen?

2 It is very short, so I will read it if it is
3 quicker.

4 A (Witness McIntire) Please read it.

5 Q Okay. The contention says:

6 "LILCO classroom training sessions have been
7 conducted by individuals who are not experienced
8 in nor knowledgeable about the subject areas
9 they are assigned to teach. In addition, the
10 teachers are not experienced or trained in teaching
11 methods."

12 Do you have any reason to disagree with that
13 contention?

14 A (Witness Keller) I think our prefiled testimony
15 is clear. The transition plan does not address the
16 qualifications of the training instructors.

17 Q So you have no reason to disagree with the
18 contention?

19 A Or to agree with it.

20 Q When you say that the ability of emergency
21 response personnel to perform their job functions is
22 traditionally evaluated in a federally observed exercise,
23 would that include an evaluation of training instructor
24 qualifications?

25 A The point is, that we are trying to make here, is

1 that it really -- and we have no reason to be concerned with
2 how the emergency worker obtains his training; if he obtains
3 it from a qualified instructor, an unqualified instructor,
4 by reading a book or by any other means, the bottom line
5 is, is this individual properly trained to perform his
6 emergency response function. And that is all we really
7 care about, not matter how he or she got that training.

8 Q Would you expect, Mr. Keller, for the instructors
9 used by LILCO in their training program, to have some
10 expertise in the subject areas they have taught?

11 Or, are you saying it just doesn't matter?

12 A If the trainees are capable, after the training
13 program has been completed, to perform their job function,
14 I personally don't care what the qualifications of the
15 instructor were.

16 Q If that is the case, Mr. Keller, I want to carry
17 this out to, I think, its logical extreme, why have you
18 reviewed any of this LILCO training material?

19 You are saying the point is they will have to
20 prove themselves to us at the time of the federally evaluated
21 exercise. So, why look at the training material at all?

22 A Because we were asked to file testimony on these
23 contentions.

24 Q I gather that you found that review to be
25 unnecessary, thought, because the point is you want to have

1 something proved to you at the time of the exercise?

2 A I think we may be playing some word games here.

3 In our previous appearance on numerous occasions
4 we were asked, have you verified many, many, many things.
5 And we were forced, because we had not verified anything to
6 say, no, all we had done was a plant review.

7 When we were asked to file testimony on these
8 training contentions, as I tried to say yesterday, we
9 attempted to go a little further than that.

10 Now, we cannot judge the effectiveness of the
11 training until we had the opportunity to evaluate the
12 performance on the individuals who were trained. We have
13 looked at the training material. The training material
14 appears to us to be of reasonable quality. It doesn't look
15 like it is too complex for people to understand, and all
16 of those kinds of things.

17 But, we do not know at this point, and I know of
18 no way for us to know, whether or not the training was
19 effective. Whether the trainees can perform their function.
20 And I know of only one way to make that evaluation, and that
21 is to observe them in an exercise.

22 Q Mr. Keller, what about -- let me suggest some
23 other ways:

24 When you said "during exercise," you are talking
25 about the FEMA-graded exercise?

mm4

1 A If I am going to have to make the evaluation of
2 whether or not the individual performs adequately, that would
3 be an evaluation that I would have to make.

4 Q Will the proof of the quality of instruction
5 or lack thereof, and ability of the individuals in LERO
6 be demonstrated through LILCO's drills and exercises, their
7 performance in those drills and exercises?

8 A It could be. But again, how do I evaluate that?
9 LILCO would evaluate that in one of their drills, right?

10 If I am going to be asked to make an evaluation,
11 I would have to evaluate the exercise.

12 A (Witness McIntire) And this is traditionally
13 the normal process that in all the exercises that I am
14 familiar with. I believe that prior to the FEMA-evaluated
15 exercises, the response organization hold numerous internal
16 drills and exercises to prepare the emergency response
17 personnel for the FEMA-evaluated exercise.

18 Q You do not rely on those internal drills or
19 exercises in any way to come to your conclusions, FEMA's
20 conclusions regarding the ability of the organization,
21 correct?

22 A That's correct.

23 Q Mr. Keller, I can't remember the list of people
24 who were at your spot check.

25 Was there a training instructor there?

mm5

1 A (Witness Keller) Yes, there was.

2 Q A LERO training instructor?

3 A That is correct.

4 Q Did you have discussions with him about his
5 qualifications?

6 A I did not.

7 MS. MONAGHAN: Objection.

8 BY MR. MILLER:

9 Q And during the spot audit, Mr. Keller, you did
10 not review any training qualification material that would
11 be in LILCO's training files?

12 MS. MONAGHAN: Objection. The question is vague.
13 I am not sure what Mr. Miller is referring to in terms of
14 qualification material. Qualification as to what?

15 MR. MILLER: I can break it down, Judge
16 Laurenson. I didn't think it was necessary.

17 I am including things such as resumes, anything
18 that would go to the issue of trainer qualification which
19 is what this contention talks about.

20 JUDGE LAURENSEN: The objection is overruled.

21 WITNESS KELLER: As I stated previously, our
22 concern is the ability of the trainee to perform his assigned
23 job function. And I guess I really am not concerned with
24 how that trainee got that information.

25 I think you are all aware -- or at least my

mm6

1 experience has been that you go to college or university,
2 and some instructors are better than others. That doesn't
3 mean that you didn't learn anything from the ones that were
4 not as good as the better ones.

5 But, the bottom line is, can you get the job done
6 when you have to? And my evaluation is, the only way we can
7 find that out and testify to that would be in an exercise
8 where we evaluated the performance of the individual trainees.

9 BY MR. MILLER:

10 Q I understand, Mr. Keller.

11 But, my question is, did you review any of these
12 trainer qualifications?

13 A (Witness Keller) I said I did not.

14 Q Would you look at your testimony, Contention 99.G.

15 You say that the plan and the training program
16 contains adequate information for personnel to be able to
17 carry out their emergency functions.

18 Do you see that statement?

19 A (Witness Kowieski) Yes, I do.

20 Q Do you believe that the plan and the training
21 program provides adequate information concerning how
22 trainees are to perform their emergency task?

23 A That is what we stated in our testimony.

24 Q For example, do you think that there have been
25 sufficient practical demonstrations and opportunities for

mm7

1 personnel to use equipment?

2 A (Witness Keller) The difficulty is with the
3 word "sufficient." Okay?

4 What we are trying to say here, that based on
5 our review, it appears that there is sufficient and adequate
6 training. We do not know whether or not the training has
7 been effective, and we are back to what we just discussed
8 in the previous contention, can they do the job?

9 Obviously if they can't do the job, there was
10 not sufficient opportunity to do something. And the only
11 way we will know that is through an evaluated exercise.

12 A (Witness McIntire) As we have stated, we have
13 not observed any of the internal LERO training. We have only
14 done what we have testified to in these contentions regarding
15 the training program.

16 Q Let me try it a different way, gentlemen.

17 Is it your opinion that providing information
18 about one's task -- and I am talking about anyone in LERO --
19 is all that is necessary in a training program?

20 A (Witness Kowieski) No.

21 Q So you would agree that you would want more than
22 a classroom session where people are shown a video tape and
23 given a workbook?

24 A That is correct. And the plan provides for it.

25 Q And maybe the steps are, you provide the information

mm8

1 to the trainee, and then you give the trainee an opportunity
2 to practice, which would be drills and exercises, and then
3 you critique that opportunity to practice, to see if they
4 can perform adequately.

5 Is that fair?

6 A (Witness McIntire) Who is the "you" that you
7 are referring to in the question, please?

8 Q It was kind of a generic question. But I can
9 make it LILCO if you want.

10 A (Witness Kowieski) That's reasonable.

11 A (Witness McIntire) Yes.

12 Q And what you are saying in Contention 99.G is
13 with respect to this first aspect, the presentation of the
14 information. You think that the LILCO plan provides
15 adequate information for people to be able to carry out
16 their tasks?

17 A (Witness Keller) Not only the plan. Also, our
18 review of the workbooks, the video tapes would lead us to
19 believe there is an adequate presentation of the material.

20 The plan further states that there will be
21 LILCO drills and LILCO exercises.

22 Q I am just trying to make sure, Mr. Keller,
23 this answer to Contention 99.G really goes just to this
24 first aspect, that is the presentation of the information to
25 the trainee. Isn't that correct?

mm9

1 A Also what the plan says about drills and
2 exercises. We have not observed drills or exercises. It
3 was represented to me at the spot check, that these drills
4 and exercises have occurred. The indication, at least
5 minimal indication of the one bus driver critique form,
6 there has to be at least one practical drill.

7 I have evidence that I saw with my own eyes
8 of at least one practical drill. So, our testimony is
9 that the plan makes provisions for these things, the training
10 material appears to be reasonable, there appears to have
11 been at least some drills. As we testified yesterday,
12 quarterly communication drills apparently have not been
13 held as of yet. But at least some other drills have been
14 held.

15 It would appear that the plan and the training
16 would be adequate to provide the ability for the trainee
17 to perform their function.

18 We are not stating at this time that these
19 trainees can perform the function.

20 Q Mr. Keller, let me ask you about that spot check
21 real quickly.

22 Do you know -- were you able to make any
23 determination whatsoever, that all training related materials
24 retained by LILCO were available for you to examine?

25 A As I tried to say yesterday, a spot check is not

mm10

1 designed to look at every item.

2 Q I understand that. And I am not asking --

3 A I would say this: That everything we asked for,
4 however it was that we arrived at what we wanted to see,
5 they went and got very quickly. There was no fumbling
6 around, no whatever that is, whatever. They went to it very
7 quickly. And, my perception was that the records were there,
8 they were complete, they were well organized and the people
9 that were in charge of maintaining these records knew what
10 they had, where they had it and could produce whatever was
11 needed out of the records.

12 Now I cannot state that all the records were
13 there, but my perception was that it was a good system.

14 Q How did you know what to ask for?

15 A We didn't have any preconceived idea. When
16 Mr. Glass and I arrived at the Hicksville center, one of
17 the first things we wanted to do was look at the numbers,
18 or at the LILCO records of people who had been trained
19 to get some concept of where they were in this training
20 process.

21 That is why we started with the numbers with the
22 notes I had made on the organization charts which we
23 provided during the depositions. From that we then led
24 into different kinds of job functions within the LERO
25 organization, and coming from different job -- day to day

1 job backgrounds, the workbook exercises.

2 Q All right.

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3 What I would like to know, Mr. Keller, is you
4 walked into a room which did not have all these training
5 materials. Did you then just start asking?

6 A No. The room -- in my recollection the training
7 materials were all in the room in which we were situated.

8 Q Were you shown a list of any kind by LILCO of the
9 things that were available for you to choose from?

10 MR. MONAGHAN: Objection. This is not relevant to
11 the scope of the contention.

12 If Mr. Miller had wished to inquire about this
13 sort of thing, he could have done so during the deposition.

14 MR. MILLER: Judge Laurenson, it is in the
15 testimony. These gentlemen have talked about their spot check
16 specifically in the testimony, and furthermore, throughout
17 the questions I have asked about training. They rely on
18 them for their testimony.

19 JUDGE LAURENSEN: Objection is overruled.

20 WITNESS KELLER: We were not offered an inventory
21 of the training materials which were available.

22 BY MR. MILLER:

23 Q Would you look at Contention 100 on page 110.

24 MR. MILLER: Judge Laurenson, if it will help
25 the other Parties, at least by the mid-morning break the

1 County will be thought with its cross examination.

2 BY MR. MILLER:

3 Q Looking at your answer to Contention 100.B --
4 do you have the contention? It is a short one again. I
5 will read it to you if it will be easier.

6 A (Witness McIntire) Would you please read it?

7 Q My question is, do you have any reason to
8 disagree with this contention:

9 "During drills LERO field personnel trainees
10 are not accompanied to their post by instructors.
11 Therefore, whatever activities they may have
12 performed during the so-called drill, have
13 not been supervised, observed, evaluated, graded
14 or critiqued. This renders the field drills
15 meaningless as training."

16 A (Witness Kowieski) We don't have any reason to
17 agree or disagree.

18 A (Witness Baldwin) Well, the plan is very
19 specific on this and we say so in the testimony. It states
20 that the definition of a drill as defined by this plan
21 and LILCO, drills are supervised instruction periods.

22 Q Mr. Baldwin, do you believe that LERO field
23 personnel, the trainees are accompanied to their posts by
24 instructors during LILCO's drills?

25 A Based on that statement, I would.

1 Q So you take that statement in the LILCO plan to
2 say that the trainees are accompanied by instructors to the
3 field posts?

4 A That's correct.

5 A (Witness Keller) I would like to add something to
6 this before we get too far down the road.

7 I am not convinced that it is -- well, we believe
8 that they are accompanied by instructional individuals, not
9 necessarily the instructor of the classroom module. It may
10 be a fine point, but I wanted --

11 Q I will agree with that, Mr. Keller, instructors of
12 any kind.

13 If I was to tell you, Mr. Baldwin, assume with me
14 that not all field personnel are accompanied to their post
15 by instructors, would you then conclude that the plan, the
16 statement in the plan is inaccurate?

17 A (Witness Baldwin) Yes, that would be an
18 inaccurate statement, then.

19 Q Would that change your testimony in any way?

20 (Witnesses conferring)

21 A (Witness Keller) I think that what our concern is
22 that the plan specifies, as we stated in our testimony, that
23 drills are evaluated by designated observers.

24 Now, if in your -- I guess it's a hypothetical. I
25 don't know. I guess in your situation if you are saying that

1 these drills are not evaluated by designated observers, we
2 would find that LILCO is not following what their plan
3 says, and we would be concerned about that.

4 I am not sure that it is necessary for every
5 individual who goes into the field to be accompanied by
6 a supervisor. But the functions should be evaluated by
7 observers.

8 end T4

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1 A (Witness Baldwin) We state that in our written
2 testimony, where we state we believe the objective of these
3 drills will be in accord with the supervised instructional
4 period.

5 Q The point that I wanted to make -- I think we
6 have concluded on this topic, actually -- is that when you
7 have seen the language in the plan, supervised instructional
8 periods, as a definition for LILCO drill, Mr. Baldwin, as
9 you have said, you take that to mean that the LERO personnel
10 are accompanied to their posts, during drills, by instructors,
11 or by observers of some kind.

12 A Not necessarily the course instructor that they
13 took it from, but, right --

14 Q Not necessarily the classroom instructor, but
15 some person who can observe and critique and perhaps tell
16 them how to do something correctly.

17 A That is true. And train them further, and
18 inform them what they are doing wrong, so that things can
19 be corrected, so that they can perform the function better.

20 A (Witness McIntire) But it is also possible to
21 have drills in a classroom setting also. We are not
22 necessarily saying that all drills have to be held where
23 the person is going to be in their emergency assignment.

24 JUDGE LAURENSEN: Let me just ask a question
25 to clarify in my own mind, are you distinguishing between

1 drills and exercises, or are you treating them as inter-
2 changeable?

3 WITNESS BALDWIN: Well, they are distinct in my
4 mind here. A drill is an instructional period, which LILCO
5 in this case is going to use as a form of training for their
6 response individuals.

7 There are certain kind of drills that are required
8 by NUREG and required by FEMA. Those are specified here,
9 and -- drills are different from exercises in the sense that
10 they are confined to a specific area.

11 MR. KOWIESKI: If I may add, when we are talking
12 about exercise, we always see they integrated every component
13 of the plan, or majority of components will be exercised.

14 The drills, usually we would call certain
15 component of the plan. Let's say communication drill. That
16 is only part of the plan that would be exercised, or radio-
17 logical area. Field monitoring teams and communications
18 between, let's say, Brookhaven and EOC. So, I would say
19 also when we are talking about exercise, we could have also
20 full scale exercise and table top exercise.

21 With full scale exercise, emergency response
22 organizations would be deployed to the field, and table top
23 exercise, they would just play with exercise scenario, and
24 the problems will be given to the players, participants,
25 and they would have to react to it, without actual deployment

1 to the field.

2 JUDGE LAURENSEN: Question 132 asks about drills
3 and exercises, but it appears that your answer is limited
4 only to the question of drills. Is that correct?

5 WITNESS KELLER: With the exception of the last
6 sentence.

7 JUDGE LAURENSEN: You have excluded that because
8 you have referred to another piece of testimony that you
9 offered?

10 WITNESS KELLER: That is correct.

11 JUDGE LAURENSEN: Is what you are saying, that
12 during a drill there should be an instructor or someone
13 present, but that that wouldn't necessarily be true during
14 an exercise?

15 (Panel confers.)

16 WITNESS KOWIESKI: As already stated, that during
17 the FEMA observed exercise, the observers will be present to
18 evaluate participants, participants in the field as well as
19 the EOC.

20 We would also expect that LERO conducting own
21 exercises without FEMA evaluating such exercise, there would
22 be observer or some instructor to evaluate the performance
23 of individuals that participate in the exercise.

24 JUDGE LAURENSEN: Let me try one more question.
25 Is it correct to say the purpose of a drill is for this

1 observer or instructor to tell the trainee that he may be
2 doing something wrong, or to offer advice, that during an
3 exercise this person pretty much remains silent and just
4 takes notes and makes a critique or evaluation of that
5 person's performance?

6 WITNESS KELLER: By and large, I would say
7 that is a good characterization. I think there is one
8 deviation from that. For example, I know the way I operate
9 at FEMA observed exercises, if for example I go out with
10 a field team, a field monitoring team, and this team makes
11 several sets of measurements at different places in space
12 and in time, and the team is making the same mistake over
13 and over again, I am afraid I am not silent.

14 If there is a State -- typically, we are working
15 with the State -- if there is a State controller present
16 also, I will give my input to the State controller, and
17 ask him to pass this on to the participants.

18 In other words, I don't let them keep making
19 the same mistake over and over again, and wait a month or
20 month and a half to get the post-exercise assessment report
21 to say you made a mistake. I happen to believe that even
22 the Federally observed exercises should be considered as
23 training, and I also happen to think that the best training
24 is when an error is made, that it is corrected as quickly as
25 possible.

1 So, with that constraint, I would say that
2 your characterization is a fair one. That most of the time
3 in the exercises the evaluator, observer, does stand back
4 and is quiet and makes notes.

5 JUDGE LAURENSEN: Thank you.

6 BY MR. MILLER: (Continuing)

7 Q Mr. Keller, keeping with the definition in your
8 testimony, drills as supervised instructional periods, you
9 did see that one form in the spot check from November of '83,
10 a bus driver drill form, correct?

11 A (Witness Keller) That is correct.

12 Q And there was no indication at all on that
13 form that that bus driver had been observed, or in any way
14 instructed by any supervisory person during his driving of
15 the vehicle during that drill, correct?

16 A Let's try to make sure that we are very clear.
17 The one piece of paper that I saw was for a participant input
18 for critique and improving of the plan. I did not ask to
19 see, or do not know whether there was, or is, or is not,
20 evaluator instructor, observer forms for that same drill.

21 I only was concerned with the individual
22 participant. Was there a system whereby the participants,
23 the trainees, were able to get input into the system to
24 endeavor to help improve the system. That is the piece I
25 looked at.

1 Q You don't know whether that bus driver
2 participant was observed by anyone during that drill though,
3 correct?

4 A I don't know whether he was or whether he
5 wasn't, that is correct.

6 Q Would you look at your testimony, Contention 100.D.
7 When you say that the plan makes provisions for drills where
8 the participants will utilize the facilities, equipment and
9 procedures, to respond to an incident, simulated incident,
10 are you saying that the plan makes such provisions for all
11 facilities, equipment and procedures to be utilized?

12 A 'All' is a word I am tripping over.

13 Q Well, I can break it down if you like.

14 A The plan does provide for the Federally evaluated
15 exercise, okay? In addition, it provides for individual
16 drills, which may compromise various components of the plan.

17 In the annual exercise, at least, we will
18 evaluate portions of the plan. We probably will not require
19 that all relocation centers be activated, for example, in any
20 one exercise. One exercise you may activate one, as Mr.
21 Kowieski pointed out yesterday.

22 In another exercise, you might activate a
23 different one. It is the, 'all' that I am having the problem
24 with. I would say, yes. Not necessarily all at one time.

25 A (Witness Baldwin) Well, it may be instructive

1 on this to point out what it says on a couple of the kind
2 of drills.

3 I mean, there are examples in here -- on the
4 additional drills, there is a distinction drawn in the plan
5 between two kinds of drills; those required by NUREG 0654,
6 where there are, I believe, four types. I can confirm that
7 if you want, and in addition there are other kinds of drills
8 defined in the plan.

9 For instance, I will take the one on notification
10 and mobilization drills. It says: These drills will require
11 the implementation of the entire LERO notification process,
12 and select mobilization of personnel to verify mobilization
13 times.

14 That means they are going to -- I read that to
15 mean that they are going to implement the entire process,
16 and selected people will be drawn out to confirm their
17 mobilization times. Just like it says.

18 Q So, Mr. Baldwin, it is fair to say the way you
19 read the plan and the statements made in the plan, during
20 LILCO drills, they are going to make all facilities, equipment
21 and procedures, available and utilized by the personnel. Maybe
22 not all at one time, but it is all going to be available
23 to the personnel.

24 A All. Yes. Right. Yes. In that case, the entire
25 notification system needed to implement will be used.

1 Q I take it, then, that you believe that during
2 a bus driver drill buses will be driven by the LERO bus
3 drivers.

4 A Let's take the drills -- yeah, exactly. There
5 is another description up here of the buses, and it says,
6 and this is the transportation coordination drill, and it
7 says: The drill will require the briefing and dispatching
8 of bus drivers and transfer point coordinators into the
9 field, and will necessitate the actual running of bus routes
10 associated with a particular staging area.

11 Q So, Mr. Baldwin, you would say that based on that
12 plan provision, if LILCO bus drivers have not been given
13 opportunities to drive buses during the LILCO drills, the
14 plan would be -- that would be a mis-statement in the plan,
15 wouldn't it?

16 A (Witness Keller) No.

17 Q Mr. Baldwin. I would like an answer from Mr.
18 Baldwin.

19 A (Witness Baldwin) Could you repeat the question?

20 Q If LERO bus drivers have not been given opportunitie
21 to drive buses during LILCO drills, then there would be a mis-
22 statement in the LILCO plan regarding what is going to be done
23 during drills, isn't that correct?

24 A Well, it says that some -- just a minute.

25 (Panel confers)

5-9-Wal

1 Q I need an answer, Mr. Baldwin.

2 A One more time, could you restate the question
3 for me?

4 Q My question is: If LERO bus drivers have not
5 driven buses during LILCO drills, would not the plan be
6 in error?

7 A Well, it doesn't say that they are going to drive
8 buses in that description I just read to you. It says they
9 are going to drive the routes, the actual running of the bus
10 routes.

11 It doesn't specify which vehicles will be used
12 to run those routes, because here I would presume one of the
13 things they are trying to ascertain is how long it takes to
14 run the routes.

15 Q Would you presume, Mr. Baldwin, that one of the
16 things you would want to find out about during a drill would
17 be whether the LILCO bus drivers are capable of driving a
18 bus? Mr. Baldwin, I would appreciate an answer, and anyone
19 else can supplement.

20 A We assume that if they have a license to drive
21 a bus, to operate the bus, that that would be satisfactory
22 to me.

23 Q So, are you telling me now, Mr. Baldwin, that
24 if a LILCO bus driver -- LERO bus driver never drives a bus,
25 that you still would believe that there would be adequate

1 drills to test his performance under the LILCO plan?

2 MR. GLASS: I object to this question. I think
3 it is becoming a little argumentative. The witnesses have
4 already testified that what is required in New York State
5 to get a bus license. I think it is just getting ridiculous
6 to argue that you are never going to drive a bus. They
7 had to drive a bus to get the license.

8 JUDGE LAURENSEN: The objection is overruled.
9 You may answer.

10 BY MR. MILLER: (Continuing)

11 Q I don't care, anyone can answer.

12 A (Witness Kowieski) First of all, one would expect
13 that before any given individual would get a license, at
14 least what happened to me, I had to drive a car to demonstrate
15 that I know how to operate the car.

16 And the same applies to bus drivers. So, I
17 would expect that the bus driver, the individual designated
18 to be bus driver would know how to drive the bus.

19 A (Witness Keller) In addition, at least a sampling
20 of the bus drivers will be evaluated during the Federally
21 evaluated exercise.

22 And it seems reasonable to me to assume that
23 LILCO will, in some way, assure themselves before the
24 Federal evaluators get there, that those people know how
25 to drive those buses and drive those routes.

1 As we have said, historically every place we
2 have been prior to the Federally evaluated exercise, there
3 are internal exercises, drills, whatever, to train people
4 to prepare and to validate the training, to make sure there
5 are no, as much as possible, problems prior to the Federally
6 evaluated exercise.

7 Q Mr. Keller, would you agree with me that perhaps
8 the best way for LILCO to provide that assurance to itself,
9 that is whether their bus drivers can drive a bus and know
10 the routes, is to give bus drivers, during drills, a bus
11 and tell them to go drive your route?

12 A That would be one way to do it, yes.

13 JUDGE LAURENSEN: Let me just inquire. During
14 a FEMA graded exercise, do you require that bus drivers
15 actually drive a bus rather than a private automobile?

16 WITNESS KOWIESKI: Absolutely, sir. We require
17 not only that the bus driver drives the bus, and follows
18 the routes designated in the plan are selected by us as
19 a free play, and he or she knows how to get to the reception
20 center, and obviously there are other elements involved.
21 Obviously evaluation if he or she knows how to read dosimetry,
22 TODs, the whole spectrum of items that are being evaluated
23 by us.

24 BY MR. MILLER: (Continuing)

25 Q Mr. Kowieski, let me follow up on that. Why do

1 you require bus drivers to drive a bus during a FEMA graded
2 exercise? Why not a car?

3 A (Witness Kowieski) First of all, we check
4 not only one function, the bus driver understands the route,
5 but also in addition we observe communication between the
6 bus -- between EOC and dispatch station. Between the manager
7 or dispatcher. Then we want to evaluate how long does it take
8 for dispatcher to mobilize bus drivers. Then how long it
9 would take to dispatch bus to designated location.

10 So, it is the whole gambit of items that we
11 evaluate. That is why we require the bus. And we feel during
12 the exercise, a FEMA evaluated exercise, it is necessary to
13 -- the actual equipment specified in the plan will be utilized.

14 end 5.
15 Sue fols.

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2 Q Are you saying now, Mr. Kowieski, that during
3 LILCO drills, LILCO drills, in your opinion, it is not
4 necessary that the LERO personnel utilize the actual
5 equipment called for by the plan?

6 A (Witness Kowieski) I'm not saying this is
7 unnecessary. I'm not saying it's not required, because
8 if LILCO or LERO feels they can prepare their own personnel
9 adequately to perform their emergency response functions
10 during the Federally-graded exercise, I don't have a
11 problem with this approach.

12 Q Well, if you take as given my statement that
13 LERO bus drivers do not drive buses during the drills,
14 and that's an example of where such equipment is not used,
15 your testimony would, therefore, not be correct, would
16 it, where you say that under the plan -- the way you are
17 reading the plan now, is your testimony still correct
18 whereby you say that the plan makes provisions for drills
19 where the participants will utilize the facilities,
20 equipment and procedures to respond to a simulated incident?

21 MR. GLASS: I think this has been gone into.
22 It has been asked and answered. I object.

23 JUDGE LAURENSEN: Overruled.

24 WITNESS MC INTIRE: What we are not saying is
25 that for all drills that all components of a particular
response should be utilized. In other words, if we use

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2 the bus drivers it's a perfectly logical training pattern,
3 in my mind, to begin in a classroom to familiarize people
4 with the concepts and the routes and then work with maps
5 and then maybe initially drive the routes with a different
6 type of vehicle and then at a later point in the drills
7 then do the whole thing as they would do in an exercise.

8 Most training, it has been my experience in
9 emergency response, uses this building block approach.

10 Q But, Mr. McIntire, at some point I gather then
11 under this approach you would expect the LERO personnel to
12 actually drive a bus?

13 A We would assume they would do it before the
14 FEMA-evaluated exercise, but we will certainly require it
15 during the FEMA-evaluated exercise. Whether they do it
16 before that or not is not really a concern of ours.

17 Q And the same, Mr. McIntire, would be true of any
18 of the equipment called for by the plan. At some time
19 prior to the FEMA-graded exercise, you would expect LERO's
20 personnel to actually utilize that equipment in drills,
21 correct?

22 A To me, it would be a logical assumption. That's
23 the best way to prepare for a FEMA-evaluated exercise, but
24 it's certainly not a requirement of ours. That's up to,
25 in this case, the utility and how they feel they can best
prepare for the exercise.

#6-3-Sue¹

(The witnesses are conferring.)

2 Q Would you look --

3 A (Witness Kowieski) One more point. I would
4 like to supplement what Mr. McIntire said. Obviously, we --
5 the NUREG 0654 requires that certain drills are conducted
6 by the utility.

7 Q Would you look at Page 111 of your testimony,
8 the answer to Contention 100.G?

9 A (The witnesses are complying.)

10 Q Mr. McIntire, again with your permission, it's
11 a short contention, I will read it. My question is: Do
12 you agree or disagree with the contention?

13 The contention states: The LILCO drills contain
14 no terminal performance standards. And, consequently there
15 are no objective observable criteria to be used by instructors
16 in evaluating the performance of the individual trainees.

17 A (The witnesses are conferring.)

18 (Witness Keller) I would say that our testimony
19 is rather clear on this point. We say that the LILCO
20 Transition Plan is not specific with regard to the per-
21 formance standards by which the adequacy of the training
22 would be evaluated.

23 We then go in to talk about how we are going to
24 do it in a FEMA drill. We are stating that the plan doesn't
25 say how they are going to do it.

#6-4-SueT 1

2 Q So, Mr. Keller, it's fair to say that at this
3 time you have no reason to agree or disagree with the
4 contention?

5 A That's right.

6 Q Would you agree with me, Mr. Keller, that
7 performance standards are important to -- well, are
8 important if the adequacy of a training program is to be
9 evaluated?

10 A I believe there is only one performance standard,
11 can the individual do the job when required.

12 Q That's the only performance standard you can
13 think of?

14 A Maybe that's the ultimate performance standard.

15 Q In terms of the internal drills and exerci s
16 that would be conducted by LILCO -- we have referred to
17 those earlier -- would you think that there would be some
18 performance standards necessary for LILCO to make judgments
19 regarding the adequacy of performance?

20 A We would like to repeat what we said in our
21 testimony. As far as we are concerned, we have no -- know
22 of no area within the plan which specifies which -- or is
23 not specific with regard to performance standards.

24 Q I understand the plan doesn't say, Mr. Keller,
25 but do you think it's necessary to have such performance
standards to be able to make judgments concerning the

#6-5-SueT 1

adequacy of performance?

2 A (Witness Baldwin) Well, it would be in the best
3 interest of the planners to have some way of evaluating how
4 they might come out on a Federally-evaluated exercise.

5 So, in that sense they want to be able to
6 ascertain whether or not these people are adequately trained
7 to perform the function to which they are assigned.

8 Q And, do you think --

9 A It would be in their best interest. I'm not
10 saying that there is any requirement that we have to go
11 look at how they serve their own best interest.

12 Q I'm not asking here for a requirement. I'm
13 looking for your collective judgment on this issue.

14 You would think that there should be some
15 performance standards to enable LILCO to make judgments
16 about the performance of LERO personnel?

17 A (Witness McIntire) That would seem to me anyway
18 the way to go. You know, any time you have an evaluation,
19 that you should have it evaluated against some performance
20 standard, you know. Whether that's done at every drill or
21 exercise is another point because of the specific purpose
22 of a drill.

23 (The witnesses are conferring.)

24 (Witness Kowieski) If I may add, on occasions
25 we, FEMA, Federal team, we go and evaluate drills or table-top

#6-6-SueT 1

2 exercises to verify whether remedial actions designed to
3 correct deficiencies identified during exercise are in
4 place. So, at that point we obviously would check whether
5 or not those drills or exercises are conducted with certain
6 set of standards, or measure against certain set of standards,
7 exercise objectives and scenario.

8 Q Mr. Kowieski, the RAC report on Elements N and O
9 address the issue of LILCO's training program; isn't that
10 correct?

11 A (Witness Kowieski) That's correct.

12 Q And in the RAC report, the Committee identified
13 a number of concerns regarding LERO's legal authority to
14 implement training aspects; isn't that correct?

15 A We identified -- raised certain concerns about
16 legal authority.

17 Q Could you briefly just tell me what those
18 concerns are?

19 A I will be glad to if you allow me a minute.

(The witness is going through documents.)

20 MR. GLASS: This appears to be repetitive, as the
21 RAC report is already in evidence. It appears to be
22 cumulative. I have an objection on that basis only.

23 BY MR. MILLER: (Continuing)

24 Q Mr. Kowieski, I'm not asking you to read them.
25 I just would like for you, if you could, to tell the Board

#6-7-SueT₁

2 and parties what the concerns are regarding LILCO's train-
ing program.

3 I think there is an objection pending.

4 JUDGE LAURENSEN: The objection is overruled.

5 WITNESS KOWIESKI: Basically, to paraphrase or
6 summarize what we -- the concerns that we raised deal with
7 the lack of participation in the integrated exercise by
8 Suffolk County and New York State.

9 BY MR. MILLER: (Continuing)

10 Q And those concerns, Mr. Kowieski, are set forth
11 in the last six pages of the RAC report, the attachment?

12 A In the attachment to the RAC report, that's
13 correct.

14 Q Are there any legal authority concerns regarding
15 training aspects of the LILCO program that are not set
16 forth in the attachment to the RAC report?

17 A No.

18 MR. MILLER: Judge Laurenson, the County has
19 no further questions.

20 JUDGE LAURENSEN: All right. We will take our
21 morning recess now. We will reconvene with the cross-
22 examination by New York State.

23 (Whereupon, a recess is taken at 10:21 a.m.,
24 to reconvene at 10:41 a.m., this same day.)

25

#6-8-SueT 1

JUDGE LAURENSEN: All right, back on the
2 record. Mr. Zahnleuter.

3 CROSS EXAMINATION

4 BY MR. ZAHNLEUTER:

5 Q Would you look at Page 8.B, that's B as in boy,
6 of your testimony? It deals with Contention 18.

7 A (The witnesses are complying.)

8 Q Your testimony states in response to Question 17.C
9 that the EBS messages do not contain provisions for the in-
10 scription of narrative descriptions of the evacuation routes
11 described in the public information brochure.

12 I take it that by narrative descriptions, you
13 mean street by street directions; is that correct?

14 A (Witness Baldwin) Well, we mean instructions.
15 We have to review, of course, whatever those instructions
16 would be. It could be street names, it could be land
17 marks, it could be signs.

18 But, yes, one would expect street names.

19 Q Is this omission in the EBS messages considered
20 to be an inadequacy?

21 A No.

22 Q Is it something that you would recommend to be
23 put in the plan?

24 A (Witness Kowieski) EBS would be desirable to
25 have this type of information in EBS message, but it's not

#6-9-SueT 1

2 essential way plan is intended to operate. As we already
3 testified, the plan states: To evacuate follow blue and
4 white evacuation route signs posted on every major road
5 and you will be directed along evacuation routes by trained
6 traffic guides who know which way you should go.

7 It is also important to note that I think if
8 you want to have effective EBS message you cannot make
9 the message too long. It has to be clear, concise, precise,
10 so that listener will not get confused.

11 Q Should the narrative description of the evacua-
12 tion routes direct the evacuees to the edge of the EPZ,
13 or should it direct them to the relocation centers?

14 A (The witnesses are conferring.)

15 The EBS, if I would go along with your recommenda-
16 tion doesn't mean I agree, but if I would go along with your
17 recommendation that EBS messages should include, provide
18 for -- provide information about evacuation routes, I would
19 say that's what required to guide -- that information should
20 provide -- the information should provide for how individuals
21 should get to the point at the boundary of ten mile planning
22 zone or emergency planning zone.

23 Q Mr. Kowieski, I don't want you to misunderstand
24 me. It's not my suggestion. I thought that that was a
25 suggestion that you meant by this sentence which I read in
your answer.

#6-10-SueT1

1 Isn't it true that in your testimony you
2 suggest that the EBS messages should contain narrative
3 descriptions of evacuation routes?

4 A (The witnesses are conferring.)

5 Excuse me. If I may ask our counsel to provide
6 us up-to-date copy of Contention 18.

7 (Mr. Glass hands a document to the witnesses.)

8 Q Now, Mr. Kowieski, maybe you still misunderstand
9 me. I'm really asking about the one sentence in your answer
10 to Question 17.C, and I really don't understand why you need
11 a copy of Contention 18 to tell me about that one sentence.

12 MS. MC CLESKEY: I'm sorry, what's the question
13 about that sentence?

14 BY MR. ZAHNLEUTER: (Continuing)

15 Q I think that my last question was, isn't it
16 true that in your testimony you state, or you suggest,
17 that the EBS messages should contain narrative descriptions
18 of the evacuation routes?

19 A (Witness Kowieski) That's correct.

20 (Witness Keller) No, no, I --

21 (Witness Kowieski) Again, to make certain that
22 we are talking about the same sentence, we stated in our
23 testimony that EBS messages do not contain provisions for
24 the insertion of narrative description of the evacuation
25 route.

#6-11-SueT

(Mr. Glass handed a document to the witnesses.)

2 MR. ZAHNLEUTER: Mr. Glass, did you just hand
3 a copy of Contention 18 to the panel?

4 MR. GLASS: Yes.

5 MR. ZAHNLEUTER: Okay.

6 BY MR. ZAHNLEUTER: (Continuing)

7 Q Let me focus my question this way, then. If
8 the EBS messages do not contain these provisions, what is
9 the importance of that omission?

10 A (Witness Kowieski) Again, in this particular
11 case, as already stated, the plan provides for, and states,
12 that population should evacuate -- to evacuate, should follow
13 the blue and white sign to evacuation route where the
14 traffic guides will direct them outside EPZ.

15 That -- basically, the importance of it is, to
16 answer the contention, do EBS messages contain the description
17 of emergency planning zone. And we state, to answer this
18 particular question, the EBS messages do not contain pro-
19 visions for the insertion of narrative description.

20 However -- and we added, to evacuate, follow blue
21 and white evacuation route signs posted on every major road.
22 And this particular statement is in the EBS messages, is
23 included in the EBS messages.

24 Q So the statement about the blue and white signs
25 is sufficient?

#6-12-Sue†

A In this particular case, yes.

2 Q I assume that you also mean then that there must
3 be some type of narrative description of the evacuation
4 route; is that correct?

5 A (The witnesses are conferring.)

6 (Witness McIntire) Some type of description in
7 the plan, in the brochure or anywhere?

8
9 end #6
10 MM flws

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1 Q Speaking about the EBS messages, and I assume
2 that since the plan states the blue and white evacuation
3 route signs will be posted, you think that is a sufficient
4 narrative description of the evacuation route?

5 A (Witness Kowieski) That's what we testified to,
6 this effect.

7 Q I would like to change your attention now to
8 page 93, and I would like you to look at question 109,
9 which addresses Contention 92.

10 Could you please read that question to yourself
11 and give me a yes or no answer?

12 A (Witness McIntire) I think rather than answering
13 yes or no, we would rather let our testimony speak for
14 itself.

15 Q My question is, would you please answer it yes
16 or no.

17 A My response is the same.

18 MR. ZAHNLEUTER: Judge Laurenson, could you
19 instruct the witnesses to answer that question yes or no.

20 JUDGE LAURENSEN: I can't instruct them if a
21 question cannot be answered yes or no. And I think that
22 is what Mr. McIntire is saying.

23 Maybe I am misinterpreting your answer,
24 Mr. McIntire. Let me restate the question to you.

25 Concerning question 109 on page 93, are you or

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1 is the panel able to answer that question yes or no?

2 (Witnesses conferring)

3 WITNESS MC INTIRE: We don't believe a single-
4 word answer would be fully responsive to the question, your
5 Honor.

6 JUDGE LAURENSEN: In light of that answer, I
7 don't think we can compel a yes or no answer.

8 BY MR. ZAHNLEUTER:

9 Q Does your answer to question 109 pertain only
10 to the protective action recommendations in the ingestion
11 pathway EPZ?

12 A (Witness Keller) The specific provisions that
13 we quote in the answer are involved with the ingestion
14 pathway EPZ, That's correct.

15 However, there is a section of the plan which
16 deals rather in a very brief manner, that says -- if my
17 recollection is correct -- something to the effect that if
18 Suffolk County chooses to participate, they would make the
19 Suffolk County participants -- they would welcome them in the
20 EOC and have them participate.

21 That is very limited. But, the plan does
22 discuss that also.

23 What we have answered here is a rather specific
24 provision with regard to how the plan would operate in the
25 event that ingestion pathway protective action recommendations

1 were made. And if the State of New York when contacted
2 said that they could not or would not implement these
3 protective actions, how LILCO would then take compensating
4 measures, if you will.

5 The same goes for Connecticut.

6 Q Other than protective action recommendations in
7 the ingestion pathway EPZ, can you answer the question?

8 If you can't, that's fine. If you can, tell me.

9 MS. MC CLESKEY: Clarification. Answer what
10 question?

11 JUDGE LAURENSEN: Talking about question 109,
12 aren't we?

13 MR. ZAHNLEUTER: Question 109.

14 WITNESS KELLER: We would prefer to stand by our
15 answer.

16 BY MR. ZAHNLEUTER:

17 Q Okay, thank you.

18 Now I would like you to look at page 106 of
19 your testimony, where you discuss Contention 44.D. And I
20 am looking at the answer to question 126.

21 And I would like to know does your answer to
22 this question pertain solely to the transmission of the
23 information which is in the radiological emergency data
24 form?

25 A (Witness Keller) Okay. As we have stated in

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1 our testimony, it was our reading of the contention to be
2 addressed specifically to the understanding of message
3 content, and was not involved -- the contention was not
4 involved with potential errors in message preparation.

5 As we stated, the plan does not specifically
6 address how this message content would be tested. However,
7 this plan uses the radiological emergency data form, which
8 is a form that has been used throughout the State of New
9 York. And this data form has a section which states,
10 protective action recommendations for the plume exposure
11 EPZ and for the ingestion exposure EPZ, the so-called 10-
12 and 50-mile EPZs.

13 And therefore, in that regard it would cover
14 both ingestion and plume exposure.

15 Q Well, Mr. Keller, is the only type of message-
16 content that you envision the type of information which would
17 be transmitted during a transmission of the radiological
18 emergency data form?

19 A Verbal information would also be transmitted in
20 all likelihood. However, it is my recollection that the
21 plan, as in all of the plans in the State of New York,
22 provide for hard-copy backup of these verbal types of
23 transmissions, so that it reduces the possibility of
24 misunderstanding. And the radiological emergency data form
25 is one of the primary means -- not necessarily the only means,

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1 but is one of the primary vehicles for transmission of data.

2 MR. ZAHNLEUTER: I have no further questions.

3 JUDGE LAURENSEN: Ms. McCleskey?

4 MS. MC CLESKEY: As I believe was previously
5 noted, Ms. Monaghan will be asking any questions about
6 training, and I will cover the other issues. That is by
7 the agreement of the parties.

8 BY MS. MC CLESKEY:

9 Q Mr. Keller, at transcript 14,168 in response to
10 Mr. McMurray's questions, you said that under the LILCO plan
11 if you report to a reception center, you will be monitored.

12 Do you recall that?

13 A (Witness Keller) That is my understanding, yes.

14 Q That is in accordance with NUREG 0654, Element
15 J-12, correct?

16 A I think that is a correct reference, yes.

17 That is correct, yes.

18 Q Under J-12, the people reporting to public
19 shelters are to be monitored regardless of whether or not
20 there has been a release of particulates, right?

21 A There is no discussion in J-12 as to whether
22 there has been a release or not, even. I think what it
23 says is that the organization shall describe the means for
24 registering and monitoring of evacuees at relocation centers
25 in host areas.

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1 Q And, Mr. Keller, is it your understanding that
2 under J-12, that monitoring of evacuees reporting to
3 relocation centers takes place regardless of the nature of
4 the release, or lack of release during an accident?

5 A That's correct.

6 Q And the purpose of this monitoring is to allay
7 fears of contamination on the part of evacuees going to public
8 shelters, isn't that right?

9 A That's one of the purposes.

10 The second purpose would be to be able to
11 identify the fact that there is contamination, if it is
12 present, and then to remove the contamination and to reduce
13 dose.

14 But certainly the issue that you raise is one of
15 the reasons you would do this.

16 Q At transcript 14,201 you stated --

17 MR. GLASS: Before you go forward, do you mind
18 if we provide him a copy of the transcript?

19 MS. MC CLESKEY: I am noting the pages for the
20 record, and I am telling them and asking them to agree with
21 my characterization of what they said.

22 I think that is probably sufficient. But I have
23 no objection if you give them a copy of the transcript.

24 (Document handed to witnesses)

25 MR. GLASS: Thank you.

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BY MS. MC CLESKEY:

Q At 14,201 you stated that there must be in the plan, letters of agreement with relocation centers. Do you recall that?

A (Witness Keller) Yes, I recall it. But, what line are you on?

We found it, thank you.

Q If the plan relies upon the Red Cross to set up and operate the centers, the plan should include a letter from the Red Cross stating so, right?

A Yes.

I think maybe we should clarify. There ought to be a letter of agreement, perhaps through an intermediary as we are talking about here. There ought to be letters of agreement which assure that these facilities will be available.

I don't think it is necessarily required that the letter be between the facility owner and in this case, LILCO. It may be between the facility owner and the Red Cross, and then another letter between the Red Cross, and in this case, LILCO. So that the chain is unbroken.

It is not, I don't believe, necessarily that the letter be between the facility owner and LILCO.

Q All right.

And under that scenario that you just described,

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1 if the letter between LILCO and the Red Cross -- the letter
2 from the Red Cross to LILCO or whatever entity the letter is
3 addressed to, states that the Red Cross has agreements with
4 the facilities that it will be relying upon, and lists the
5 facilities, do you think it is necessary in addition to
6 have the letters between the Red Cross and the facilities
7 in the emergency plan?

8 MR. MC MURRAY: Objection. I think this is a
9 hypothetical that has no basis in any facts stated in this
10 record so far.

11 JUDGE LAURENSEN: Overruled.

12 (Witnesses conferring)

13 WITNESS KOWIESKI: The plan does not have to
14 contain letter of agreement itself. However, a signature
15 page should be provided.

16 What we would require, we would require copy of
17 the letter of agreement for our office, for our files.

18 WITNESS KELLER: In addition, we should point
19 out -- and we discussed this previously -- since the
20 relocation center operation that is envisioned in the LILCO
21 plan is somewhat different than the normal sheltering kind
22 of thing that the Red Cross normally does, that the letter
23 of agreement between the Red Cross and LILCO should be
24 specific so that it is clear that both parties understand
25 that this type of activity is going to occur in that same

1 facility and how the interfaces between these two
2 activities are going to be worked out.

3 BY MS. MC CLESKEY:

4 Q Are you referring to monitoring and decontamina-
5 tion?

6 A (Witness Keller) That's correct, yes.

7 Q Assume for the purposes of our discussion
8 that at the shelters that the Red Cross has represented in
9 its letter to LILCO that it has, that there is no monitoring
10 or decontamination going on. They are simply going to set
11 up shelters, do you still need the signature pages of the
12 individual agreements between the Red Cross and the
13 shelters?

14 A (Witness Kowieski) Yes, we do.

15 A (Witness McIntire) To amplify on that just a
16 bit, it is my understanding it is normal Red Cross procedures
17 to have a letter of agreement with any facility that they
18 intend to use for a shelter.

19 Q Mr. Keller, at 14,207 in response to Mr. McMurray's
20 questions, you said that one good approach to monitoring
21 would be to choose one or two primary centers for monitoring
22 and decontamination and then send people on to other
23 relocation centers if necessary.

24 Do you recall that?

25 A (Witness Keller) Yes, I do.

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1 Q It is true, isn't it, that the people should be
2 monitored at what you referred to as a primary center,
3 before they are sent on to any other shelters?

4 A Yes, that's correct.

5 Q Okay.

6 And to that end you would want to tell evacuees
7 in public information material, to go to the centers where
8 monitoring was being done, not to the additional shelters?

9 A That's correct. This is one of the issues that we
10 raised when we discussed yesterday, some of our concerns with
11 the public education brochure, that this type of information
12 is currently not in that brochure.

13 Q Okay.

14 In addition, Mr. Keller, at 14,212 you said that
15 you thought that 20 miles from the EPZ boundary would be
16 too far for a relocation center. Do you recall that?

17 A Yes. But I also recall some discussion that I
18 had prior to that. I think I said that it would depend on
19 the particular situation.

20 If, for example, multiple bus routes were required
21 where a bus would travel an evacuation route and then take
22 these evacuees to a reception center and have to return to
23 run the evacuation route a second time, we are beginning to
24 get into some rather -- well, some distances that would take,
25 even at high speed, 30 to 40 minutes each way. And the

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1 20-mile figure was just a number that I picked out of the air.

2 We had also discussed the availability of suitable
3 structures. I mean, if there were a structure at 22 miles,
4 and there was not a structure at 18 miles, it would be
5 better to use -- a suitable structure at 18 miles -- it
6 would be better to use the one at 22 than an unsuitable one
7 at 18, and that type of thing.

8 So you have to consider the way the plan is
9 structured and how you are going to do it.

10 Q So, because of -- I beg your pardon, are you all
11 finished with your answer?

12 A Yes, go ahead.

13 Q Because of these factors which you just discussed
14 which may vary from plant to plant, you would not reject
15 out of hand a relocation center located at 20 miles from
16 the EPZ boundary?

17 A I would hope we would not reject out of hand
18 anything. I would hope that we would consider, we in some
19 reasoned way, almost everything that was proposed.

20 But now, more specifically looking at the
21 situation, 22, 25 miles might even be acceptable. In point
22 of fact in this particular plan, the way this plan is
23 structured, the use of the transfer points would lead me to
24 believe that a relocation center which might be further
25 away than would normally be acceptable, might be an

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1 acceptable alternative, since the buses which are going to
2 remove the evacuees from the EPZ, the near-in parts of the
3 zone where the risk is higher, will have gotten the
4 evacuees out of the zone or out of the high-risk area --
5 not necessarily out of the zone, but towards the edge of
6 the zone, and in some cases out of the planning zone, so
7 that the transfer of these people to the relocation center,
8 the urgency with which you would like to do this has been
9 alleviated to some degree with this type of concept.

10 A (Witness Kowieski) I would like to emphasize
11 what Mr. Keller said.

12 The way the LILCO plan is structured having the
13 areas where people would be evacuated and would wait for a
14 bus to take them to relocation center, that is another
15 good reason if the relocation center would be 25 miles away,
16 I would consider it to be acceptable.

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1 Q As to Contention 96, on loss of offsite power,
2 Mr. McIntire and Mr. Kowieski, you both testified yesterday
3 that a lack of street lights at night might impede an
4 evacuation.

5 Do you recall that?

6 A (Witness McIntire) Yes, I do.

7 Q That would be true as the result of a power
8 failure in any community around any power plant, wouldn't
9 it?

10 A Yes , it would.

11 Q And you also testified that the LILCO plan
12 doesn't specifically address the effects of loss of offsite
13 power on street lights, gas pumps, and residential lighting.
14 Do you recall that?

15 A Yes, I do.

16 Q Does NUREG 0654 require that an emergency plan
17 specifically address the effects of loss of offsite power
18 on those three items?

19 A (Witness Kowieski) No, it does not.

20 Q Mr. Keller, you would agree, wouldn't you, that
21 it is highly unlikely that background would exceed fifty
22 counts per minute at a location twenty miles from the plant?

23 A (Witness Keller) I would agree that it is
24 highly unlikely that first of all the accident would occur,
25 second of all, it is even more unlikely that backgrounds would

1 exceed fifty counts a minute. I think -- twenty five miles
2 from the plant?

3 Q Twenty.

4 A Twenty miles from the plant.

5 Q And Mr. Keller, you testified that as to the
6 estimate of total population exposure that was useful for
7 evaluating the magnitude of long term consequences of an
8 accident. Do you recall that?

9 A Yes.

10 Q That estimate is not of an immediate concern
11 in an emergency response, is it?

12 A I would interpret the fact that the requirement,
13 this requirement is placed in Planning Standard M of 0654,
14 which is recovery and re-entry planning standard that the
15 authors of the document had assumed that this was not an
16 immediate problem. It is a down-the-road kind of thing.

17 MS. McCLESKEY: Thank you, gentlemen. Ms.
18 Monaghan has some questions on training.

19 CROSS EXAMINATION

20 BY MS. MONAGHAN:

21 Q Mr. Keller, you stated that one of the factors
22 which determined how you and the other members of the panel
23 split up the training materials for review was time
24 availability. Isn't it true that another factor was the
25 expertise or background in this specific subject area?

1 A (Witness Keller) That is correct. That is what
2 we said in our depositions last week, that there were
3 basically two factors; expertise and availability of time.

4 Q Mr. Keller, in addition to the modules on security
5 and relocation centers, isn't it also true that you reviewed
6 Module 3, entitled: Radiation Protection. Module 9,
7 concerning personnel dosimetry. Module 10, on decontamination
8 and monitoring, and Module 11, on contaminated and injured
9 personnel?

10 A Those, in addition to, I think, at least two
11 others.

12 Q Do you consider yourself an expert on the subjects
13 of radiological assessment and monitoring covered by the
14 modules I just listed?

15 A I do.

16 Q Did you apply that expertise when you reviewed
17 those modules?

18 A I hope I did.

19 Q Mr. Baldwin, during your deposition you also
20 listed a number of modules that you had reviewed.

21 A (Witness Baldwin) Yes, I did.

22 Q Isn't it true that among the modules you reviewed,
23 there were modules covering the areas of communications,
24 evacuation operations, relocation centers, and command and
25 control?

1 A Yes, that is correct.

2 Q Do you consider yourself to have expertise in
3 those subject areas?

4 A Yes, I do.

5 Q Did you apply that expertise in reviewing those
6 modules?

7 A Yes , I did.

8 Q Mr. McIntire, during your deposition and yesterday,
9 I believe that you stated that the purpose of your review
10 of the LILCO training materials was to compare the quality
11 of the presentation with the quality of other disaster
12 training materials that you have reviewed over the years,
13 is that correct?

14 A (Witness McIntire) Yes, it is.

15 Q Isn't it true that the results of that
16 comparison were that the LILCO program was basically much
17 better in overall quality?

18 MR. MILLER: Objection, Judge Laurenson. It is
19 irrelevant to this proceeding what other plans and what
20 other training programs may or may not provide for.

21 JUDGE LAURENSEN: Overruled.

22 WITNESS McINTIRE: I believe my characterization
23 was better.

24 BY MS. MONAGHAN: (Continuing)

25 Q Mr. Keller, let's talk a little bit about the

1 audit or spot check that you conducted of the LILCO training
2 records.

3 When you conducted your audit, isn't it true
4 that either you or Mr. Glass selected the documents that you
5 wished to review?

6 A (Witness Keller) That is correct.

7 Q They were not pre-selected for you by the LILCO
8 personnel, were they?

9 A I believe we have testified to that. That is
10 correct.

11 Q Were you refused access to any documents that
12 you asked to see?

13 A We were not.

14 Q Do you recall that Mr. Miller asked you whether
15 you were provided with an inventory of all the available
16 documents?

17 A I recall that, yes.

18 Q Did you ask LILCO for such an inventory?

19 A We did not.

20 Q Have you reviewed other such training logs before,
21 at other facilities?

22 A Not in the same way. But during exercises,
23 we have reviewed lists of trained individuals. We have
24 reviewed training schedules. For example, State provides
25 training to County employees, et cetera. At the Indian

1 Point -- during the Indian Point hearings and proceedings.
2 Some of the FEMA people actually attended training sessions
3 so that -- not in precisely the same way, but in an
4 analogous manner, yes.

5 Q Would it be fair to say that you are generally
6 familiar with the types of training records that are kept
7 by a local emergency response organization?

8 A Yes.

9 Q Now, I believe that you stated that the process
10 that you used to review the training records when you did
11 your spot check or audit, was that you looked at the
12 attendance records, is that correct?

13 A That is correct.

14 Q And that for each classroom session, LILCO has
15 a computer printout with the names and LERO job positions
16 of each person who was to attend that classroom session,
17 is that correct?

18 A I believe that I had said -- I assumed that these
19 were prescheduled, and that the computer had printed out
20 these -- they scheduled a particular training session for
21 a particular day, the computer printed a list of the person's
22 name, what his job was supposed to be, and this was done on
23 a pre-scheduled basis, yes.

24 Q And also on that sheet there was a space for the
25 individual to sign in when in fact he attended that pre-scheduled

1 session, is that right?

2 A That is correct.

3 Q On the attendance sheets that you reviewed, was
4 it ever the case that more people had signed in than were
5 pre-scheduled for that classroom session?

6 A Yes.

7 Q Was that frequently the case?

8 A Yes.

9 Q To what do you attribute those additional
10 sign-ins?

11 A Well, I think we had discussed yesterday that
12 in the event that an individual missed a training session,
13 and did not sign in one of these pre-scheduled sessions,
14 indicating he did not attend that session, we then followed
15 the records through to assure that that individual had,
16 indeed, taken a subsequent training session on that module,
17 and I think in every case, and I may be incorrect here, but
18 at least in a vast majority of the cases where these people
19 had missed a session, they had not -- they were not part
20 of the printed -- computer printed names on the subsequent
21 session.

22 These names were almost always written in by
23 hand.

24 Q Were you able to verify in every case in which
25 you attempted to make such verification, that the trainees

1 who missed a training session were rescheduled, and in fact,
2 made up the sessions at a later date?

3 A Well, I would interpret it they were not
4 necessarily rescheduled, since they did not appear as -- in
5 most cases -- did not appear as a printed -- computer printed
6 name on the subsequent training session. But in fact, they
7 had signed the subsequent training logs, and that there
8 were no cases that they had not completed the training that
9 the records indicated that they had training.

10 Q The attendance records appear to be in good
11 order?

12 A Yes.

13 Q Were you able to assure yourself that LILCO had
14 a good method for tracking attendance and its training program
15 in general?

16 A My perception is that the records are in good
17 order. They are stored well. The people who have to use them
18 know how to use them. They can obtain the information they
19 need to obtain from them.

20 My perception is, based on the spot check, that
21 it is a good system, yes.

22 Q Now, during your spot check you also reviewed some
23 of the self-check tests that are part of the workbooks, is
24 that correct?

25 A Yes. The question and answer section at the back

1 of the workbooks. I am not really sure what to characterize
2 them, but --

3 Q We will call them the Question and Answer
4 Section. Were the majority of the answers in those question
5 and answer sections correct?

6 A The majority, yes.

7 Q Were there some that were incorrect?

8 A Yes.

9 Q Did it surprise you that there were some that
10 were incorrect?

11 A No.

12 Q Would you expect all of the answers to be
13 correct?

14 A As I stated in our deposition, I would be more
15 concerned if all of the answers on all of the workbook
16 question and answer sessions, were correct. I would believe
17 that, perhaps, there was some coaching going on. And it does
18 not surprise me that there were incorrect answers, and that
19 there were some answers that were omitted, no.

20 Q You also stated that during the spot check you
21 reviewed the training records for the ambulance companies.

22 A That is correct.

23 Q Is it your understanding that LILCO intends to
24 use eleven ambulance companies in the plan?

25 A That is my understanding, yes.

1 Q Is it true that because LILCO has only trained
2 personnel for four of the eleven ambulance companies, that
3 you have stated that the ambulance training is incomplete?

4 A That is correct.

5 Q Is it your understanding that LILCO intends
6 to train the remaining ambulance companies?

7 A That is my assumption. I don't believe -- I
8 don't recall it being represented to me, but I assume that
9 LILCO intended to complete the rest of the training.

10 Q So the only reason you stated that the ambulance
11 training was incomplete at this time is because they have
12 not done training for all ambulance companies. Is that
13 a correct characterization?

14 A That is a correct characterization.

15 Q Mr. Keller, could you just summarize for me
16 what conclusions you drew from the audit that you did of the
17 LILCO records?

18 A I was able to get the perception that the
19 records were available. They were complete as far as our
20 spot check went. They were accurate. That there was a
21 tracking system. They were usable by the people in LILCO
22 who were required to use these, and that LILCO would be
23 able to keep track of the number of people that were trained
24 for various job functions, and that if additional training
25 were required in any given job function, that LILCO would

1 be able to identify that training, and I assume would make
2 up the training.

3 Q Were you also able to ascertain that the bulk
4 of the people who needed to be trained have been trained?

5 A According to the numbers that I -- the notes I
6 made off the computer printout, that that is a correct
7 characterization.

8 Q Do you have any reason to believe that the
9 numbers that you saw on the computer printout would be
10 incorrect in any way?

11 A No. As a matter of fact, based on the fact that
12 every piece of documentation that we asked to see, and all
13 the checking that we did, where people did not attend
14 sessions, et cetera, every indication is that the records
15 are accurate and truly represent the situation and, therefore,
16 I assume that the computer printout is also accurate.

17 Q Mr. McIntire, do you recall that there has been
18 some discussion regarding attrition at non-LILCO organizations
19 and retraining of those non-LILCO personnel?

20 A (Witness McIntire) Yes, I do.

21 Q And I believe that you stated that -- and I think
22 Mr. Keller did also -- that a letter of agreement gives
23 sufficient assurance that the non-LILCO organization will
24 contact LILCO for supplemental training if that becomes
25 necessary for its personnel. Is that a correct characterization

1 of the panel's testimony?

2 A (Witness Keller) I believe I made that
3 statement, yes.

4 Q All right, Mr. Keller. I thought it was Mr.
5 McIntire, but we will go back to you. And I believe that
6 you expressed some concern that the letter between the --
7 between LILCO and the Coast Guard might be considered a
8 letter of intent, and therefore -- as opposed to a letter
9 of agreement, is that correct, or did I mis-hear you?

10 A I think that came out of -- I don't remember
11 that.

12 Q Gentlemen, are you familiar with Attachment 10
13 to LILCO's testimony, which is a letter to Captain Wagen
14 of the United States Coast Guard from Mr. Daverio at
15 LILCO? I have additional copies if you would like to see
16 them.

17 MR. GLASS: If you could provide copies to the
18 witnesses, it would be appreciated.

19 MR. MILLER: Judge Laurenson, before the
20 copies are presented I am going to object. What is the
21 point of this? The Board has made clear, the witnesses
22 have made clear they have reviewed Revision 3 of the LILCO
23 Plan. Attachments to LILCO's testimony have no relevancy.
24 It is not an issue that has been reviewed by this panel. It
25 is not an issue that has been reviewed by the RAC Committee,

1 which obviously is the body that speaks on behalf of FEMA in
2 this regard.

3 If we are going to start showing these witnesses
4 attachments to our testimony, I don't see where we are going
5 to lead to, but I can imagine where. It will be down the
6 road a long ways.

7 MS. MONAGHAN: Judge Laurenson, this is the only
8 attachment to the testimony that I intend to show these
9 witnesses. I believe that Mr. Kowieski and at least one
10 other member of the panel indicated that they had reviewed
11 both Suffolk County's testimony and LILCO's testimony.

12 I have just one question to ask with respect
13 to this attachment, and I believe that the attachments to
14 the LILCO testimony have already been made part of this
15 record.

16 MR. MILLER: But they haven't been reviewed
17 by these witnesses.

18 JUDGE LAURENSEN: Objection is overruled.

19 BY MS. MONAGHAN: (Continuing)

20 Q If you will just take a moment to review that
21 letter. Have you had sufficient time to review the letter?

22 A (Witness McIntire) Yes.

23 Q Mr. McIntire, since you said, 'yes,' first,
24 would this letter give you an assurance that the Coast Guard
25 would, in fact, contact LILCO in the event that their level

1 of trained personnel fell below the level they felt they
2 needed to respond?

3 A (Witness Kowieski) I wouldn't characterize
4 it as assurance. I would say it is an offer, and I would
5 expect that the Coast Guard would accept the offer.

6 I don't have a reason to believe that the
7 Coast Guard would refuse the offer, especially that they
8 already have accepted annual training.

9 Q Are you aware that the Coast Guard has put
10 together its own contingency plan?

11 MR. MILLER: Objection, Judge Laurenson. This
12 is a hypothetical question. There is no factual basis on
13 the record. These witnesses have previously testified they
14 have not had discussions with the Coast Guard.

15 End 8.
16 Sue fols.

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MS. MONAGHAN: Judge Laurenson, I think I'm entitled to an answer to the question as to what their understanding is of whether such a thing existed or not.

JUDGE LAURENSEN: The objection is overruled.

WITNESS KOWIESKI: My understanding is that the Coast Guard has own requirements and regulations that would require that they would respond to any emergency, including radiological emergency.

(The witnesses are conferring.)

BY MS. MONAGHAN: (Continuing)

Q Mr. Kowieski, I believe that during your prior testimony you stated that during a FEMA drill the bus driver would not be aware of what route he would drive prior to an exercise; is that correct?

A (Witness Kowieski) That's correct.

Q Do you believe that a bus driver ought to have experience in driving the particular route that he would drive in an emergency prior to that emergency?

A Yes, I do. I feel it's important that the bus driver would study the route, evacuation route, prior to exercise.

(The witnesses are conferring.)

Well, I would say I would qualify it to be desirable. But, personally I would like to see the bus driver actually would drive the route prior to the exercise.

#9-2-SueT 1

2 Q Is that the specific route that he would be
3 driving in an emergency, or is it your understanding that
4 emergency planners plan for some interchangeability between
5 those persons who would be driving buses so that any number
6 of people would be qualified to drive a particular route?

7 A (Witness McIntire) That would be highly
8 desirable.

9 Q Mr. Keller, I believe that there was some
10 discussion yesterday about whether the jobs that are to be
11 performed under the LILCO Transition Plan are complex or
12 not terribly complex.

13 And I believe that you stated that you believe
14 that the Radiation Health Coordinator should have some
15 technical expertise in his area; is that a correct assess-
16 ment?

17 A (Witness Keller) That's correct, yes.

18 Q Do --

19 A To keep it clear, I also -- I had eliminated from
20 that discussion the DOE people from Brookhaven. I think
21 they also should have some technical background, but they
22 are not really LERO people, and I recognize that the Radia-
23 tion Health Coordinator is an outside consultant, but once
24 he comes on board I put him in the LERO organization.

25 The Brookhaven people when they are doing this
monitoring, they could be considered LERO also. But I kept

#9-3-SueT 1

2 them separate. But if I gave the impression that I did
3 not think that the Brookhaven people ought to have a
4 technical background that's incorrect characterization.
5 They also should have some technical background, but the
6 other kinds of jobs that the LILCO employees, the typical
7 LILCO employees, are expected to do with the exceptions that
8 we talked about yesterday, what you said is correct. Yes.

9 Q Is it your understanding that the consultant who
10 will be the Radiation Health Coordinator does have technical
11 background?

12 A Based on our review of Revision 3 of the plan,
13 we don't know anything about -- specifically about this.
14 It was represented to me at the spot check audit that these
15 were going to be IMPEL employees, I believe, and that they
16 did indeed have radiological backgrounds.

17 But that was just a representation. We have not
18 verified it. We know nothing about it.

19 Q Do you believe that the DOE response personnel
20 have a technical background in the area that they will be
21 performing?

22 A Yes, I do.

23 Q Gentlemen, if you would, turn to your testimony
24 on Contention 41, please?

25 A (The witnesses are complying.)

Q In drafting your response to the question, does

#9-4-SueT 1

2 a LILCO transition plan provide for adequate training in
3 the use of communications equipment for emergency response
4 personnel, did you rely solely on the plan or did you also
5 rely on your review of the training materials?

6 A (The witnesses are conferring.)

7 Primarily the plan.

8 Q Mr. Keller, you said primarily. Does that mean
9 secondarily you relied on the training materials?

10 A There was some information in some of the
11 training materials which I suppose bore. But this specific
12 response I would say came out of the plan.

13 I might add that the last sentence came out of
14 the spot check audit.

15 Q Okay. Gentlemen, I am going to ask you to look
16 at Volume 1 of the procedures. I'm sorry, Volume 2 of the
17 procedures, at OPIP 5.1.1, if you would, please.

18 A (The witnesses are complying.)

19 Q And I would ask you to look at Page 10.F of 18
20 pages of that OPIP, Section 5.2.5.7. There has been
21 considerable discussion about free-play for decision-making
22 and whether or not there were provisions for including
23 free-play for decision-making in the drills under the LILCO
24 plan.

25 Does Section 5.2.5.7 indicate that such free-play
for decision-making will be included in those drills and

#9-5-SueT 1

exercises?

2 A What it says is for all exercises and some
3 drills. That is correct.

4 Q Mr. Kowieski, isn't it true that any exercise
5 scenario that would be approved for FEMA exercise would
6 necessarily include free-play for decision-making?

7 A (Witness Kowieski) That's our policy in the
8 FEMA Region II.

9 Q So that, therefore, in the FEMA exercise, FEMA
10 Region II could test whether or not the individuals were
11 able to respond to the scenario in a free-play situation?

12 A For a number of activities.

13 Q Mr. Keller, I believe this question should be
14 addressed to you. I think that you stated that you have
15 not evaluated whether LILCO has the expertise and objectivity
16 to evaluate its own drills and exercises.

17 A (Witness Keller) No. I think what I said was
18 that the plan writer, the -- I don't understand, I don't
19 comprehend, the questioning of the ability of the plan
20 writer to evaluate the implementation of his own plan and
21 to correct it and to make corrections based on the implemen-
22 tation of that plan. I personally don't understand how that
23 possibility can even be raised.

24 Q So that you would think that LILCO would have
25 the expertise and objectivity to in fact evaluate its

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drills and exercises?

2 A Since this was the organization that developed
3 the plan in the first place, they ought to be able to change
4 the plan by experience and learning from the testing of
5 the implementation of that plan. Yes.

6 Q Mr. Keller, is it your understanding that they
7 not only would be able to change the plan but they would
8 be able to critique the performance of the individuals in
9 a drill or exercise, LILCO that is?

10 A I would assume that they should be able to.
11 Yes.

12 Q Mr. Keller, would you look at the plan and turn
13 to Page 5.1-6?

14 A (The witness is complying.)

15 Q It's Lines 35 through 38 if that helps you any.

16 A Yes.

17 Q With respect to Contention 98, I believe Mr.
18 Miller asked you some questions about the periodic retrain-
19 ing that would be offered to non-LILCO organizations.

20 A Yes.

21 Q Could you tell me what the plan says about what
22 LILCO proposes to do with respect to retraining for non-
23 LILCO organizations?

24 MR. MILLER: Ms. Monaghan, are you requesting
25 Mr. Keller to read the plan?

#9-7-SueT 1

2 MS. MONAGHAN: In whatever way he wants to tell
me what it says in the plan, he can do so.

3 WITNESS KELLER: As I tried to say in our
4 testimony earlier to Mr. Miller, I said that LILCO would
5 offer training to organizations and the plan states the
6 timetable for conducting the agreed upon training would be
7 developed. And this would be done at least annually.

8 BY MS. MONAGHAN: (Continuing)

9 Q So, is it your understanding that LILCO will
10 eventually go to the organizations on an annual basis and
11 offer them training?

12 A That's the way I would interpret the plan, yes.
13 The organization may turn it down annually, but my interpre-
14 tation of the plan is that LILCO would offer it at least
15 annually.

16 Q So that the organization who would be receiving
17 the training wouldn't be required to go to LILCO and ask
18 for the training, but rather LILCO would go to the organiza-
19 tion?

20 A As I read this section of the plan -- let me
21 read it: Annually the emergency planning coordinator or
22 his designee will meet with each organization to develop
23 a timetable for conducting the agreed upon training program.

24 It's not specific who initiates the meeting, but
25 if the plan is followed, since it's the LILCO plan it would

#9-8-SueT 1

2 be incumbent upon LILCO to make sure that the meeting had
3 been initiated.

4 (The witnesses are conferring.)

5 Q Is there anything you wish to add, gentlemen?

6 A No. Mr. Baldwin has version 4, and we weren't
7 tracking a hundred percent.

8 Q Gentlemen, are you aware that as part of the
9 training that is being offered to traffic guides that
10 LILCO is conducting an in-the-field classroom session where
11 traffic guides are actually directing traffic in a LILCO
12 parking lot?

13 MR. MILLER: Judge Laurenson, I'm going to
14 object just because I think it's vague to use the phrase
15 "in-the-field." I think it's also misleading.

16 JUDGE LAURENSON: Overruled.

17 WITNESS KELLER: During the spot check audit,
18 as we were leaving the building, we saw an area which was
19 represented to be an area where LILCO traffic guides would
20 be trained in the parking lot actually directing traffic.

21 BY MS. MONAGHAN: (Continuing)

22 Q Do you know whether this would be supervised
23 training sessions?

24 A I assume that they would be. It's only an
25 assumption.

MS. MONAGHAN: I have no further questions.

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JUDGE LAURENSEN: Any redirect, Mr. Glass?

MR. GLASS: No redirect.

JUDGE LAURENSEN: Any further cross-examination, Mr. Miller?

MR. MILLER: Limited, Judge Miller. We are going to do this in reverse order. I'm going to go ahead and take care of the training.

CROSS EXAMINATION

BY MR. MILLER:

Q Mr. Keller, Ms. Monaghan's questions to you about expertise and objectivity by LILCO, I want to make sure I understand the logic here.

I take it you are saying that because LILCO wrote the plan, LILCO should have expertise in making revisions to the plan?

A Yes, based on an exercise or a drill which really is a demonstration of the implementation of the plan. Exercises and drills are used to -- as, (A) training for the participants, but they are also used as demonstrations to see if what you wrote on paper can actually be accomplished physically in the real world. And if it can't be accomplished, then you have got to go back and change the plan.

I personally have a problem understanding how there could be any question that if the individual who wrote

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the plan ought to be able to fix it.

2 Q Yes, sir. The contention at issue talks about
3 expertise and objectivity and critiquing and evaluating
4 drill and exercise performance by the LERO personnel.

5 You understand that, correct?

6 A I understand, yes.

7 Q Now, are you saying that LILCO's having written
8 the plan gives LILCO expertise in critiquing and evaluating
9 LILCO drills?

10 A Yes, I think it does, with the addition that even
11 if I'm wrong in this and LILCO cannot critique adequately
12 and evaluate adequately and fix the plan, the Federally-
13 evaluated exercise will establish this fact.

14 Q And are you saying, Mr. Keller, that the mere
15 fact that LILCO wrote its plan ensures that LILCO will be
16 objective in critiquing and evaluating its own exercises
17 and drills?

18 A I believe that it's in LILCO's own best interest
19 to be objective.

20 Q That is different from my question.

21 A And I believe that they will be, yes.

22 Q And what's the basis for that belief? Is that
23 just an assumption on your part?

24 A It's my belief.

25 Q The questions that were asked by Ms. Monaghan

#9-11-SueT

2 regarding the driving of bus routes, I take it that it's
3 your testimony, gentlemen, that LILCO's bus drivers
4 need not be trained prior to the FEMA-graded exercise
5 in driving a particular bus route?

6 A (The witnesses are conferring.)

7 That's a mischaracterization of our testimony
8 I believe.

9 Q Would you tell me -- why don't you straighten
10 me out?

11 A I believe what we said was that the drivers
12 need to be trained. Number one.

13 Number two, we did not think it mandatory that
14 the drivers drive buses over the routes. We think it
15 would be desirable. We do not envision route-specific
16 training, if you will, if you will allow me that term,
17 wherein bus driver A is only trained to drive route A
18 and bus driver B is only trained to drive route C, et cetera.
19 Okay.

20 This is the reason that good maps, reliable,
21 readable maps, are required. We would think it would be
22 desirable for the bus drivers to have driven some, not
23 necessarily all, but some of the bus routes prior to a
24 FEMA-graded exercise.

25 If LILCO decides that in their own training they
would prefer not to do it that way, we really can't say one

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1 way or the other. We think it probably would be better
2 if they did, but we don't have any requirement that they
3 do.

4 Q Let me try again, Mr. Keller. Is it your
5 testimony that LILCO's training program for bus drivers
6 should be capable of training personnel to drive bus routes
7 and not necessarily particular bus routes?

8 Is that a fair characterization of your
9 testimony?

10 A (The witnesses are conferring.)

11 No, I don't think the way you characterized our
12 testimony is what it is. Let us try to clear it up.

13 We don't think they should be trained to drive
14 a specific bus route. I mean, a driver, a specific bus
15 route.

16 There ought to be flexibility. They ought to be
17 able -- a driver ought to be able to drive bus routes,
18 multiple. Okay.

19 Q And, Mr. Keller, for that to be possible, is it
20 fair to say that there would have to be available to the
21 bus drivers good maps?

22 A I would say that would be a requirement.

23 Q And FEMA has not evaluated or reviewed the maps
24 provided by LILCO to its bus drivers, correct?

25 A That is correct.

#9-13-SueT1

Q Mr. Keller, this issue about the spot check, you were asked by Ms. Monaghan if all the paper requested during this spot check was produced to you, and you said that it was.

Correct?

A That's correct.

Q Now, the paper, I take it, refers to the LILCO training materials, and isn't it fair to say, Mr. Keller, that you may not have known all the paper in the LILCO files to request?

A We never intended to ask for all of the paper in the LILCO files, and I do not know -- I did not know at that time, and I do not know today, all of the things which were in the LILCO files.

Q So, you --

A With regard to training.

Q So, by definition, Mr. Keller, you would not know whether there could have been something that you may have requested but didn't, for whatever reason, that would not have been available in LILCO's files?

A The purpose of a spot check is indeed just that, to do a spot check. If, during the spot check, where selected items are reviewed an identification of problems -- you identify the fact that there are problems -- and they can't produce a piece of paper, then you dig more deeply.

#9-14-SueT

We did not find that situation. Every piece of paper we asked for was produced promptly. But it is also true that I didn't know, we didn't know, what all the pieces of paper were and, therefore, it is possible, although the indications from the spot check say otherwise, that there are some pieces of paper which are not in the files.

end #9

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2 Q Mr. Keller, the issue about the trainer review
3 exercises, again in the workbooks that you looked through,
4 you said that most of the answers were correct, and there
5 were some incorrect.

6 Is that a fair summary?

7 A Yes, that is correct.

8 Q That implies, Mr. Keller, that you actually
9 went through and attempted to grade these workbook exercises,
10 the one at least that you reviewed?

11 A Grade is a -- I looked at every question to
12 every answer in every workbook I looked at. I had perception
13 in my own mind of what the correct answer was.

14 Did I make a tabulation of one right, one wrong,
15 one right, one wrong? No, I did not. But I had in my own
16 mind what I thought were the right answers and I believe
17 that I was correct in my assumption of what the right answers
18 and wrong answers were.

19 Yes, I looked at every question and every
20 answer of every workbook exercise I looked at, and I got a
21 perception that the vast majority were correct. There were
22 some that were wrong, and some that were blank.

23 Q Now, Mr. Keller, you said that it would have
24 surprised you if all the answers would have been correct?

25 A That's correct.

Q And that would have led to the conclusion that

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1 perhaps there would have been coaching?

2 A Yes, that's correct.

3 Q Now, is it an important factor in that determina-
4 tion by you as to whether or not those workbook exercises
5 were open-book reviews by the LILCO personnel?

6 A No.

7 Q You think it is just as likely that you could
8 have incorrect answers if you have a closed-book exam test
9 as if you have an open book review?

10 A My experience leads me to believe, based on actual
11 experience -- I took a course in college in which all the
12 tests were open-book tests, and they were the toughest tests
13 I have ever taken in my life, and I didn't get 100 on every
14 one of them, no.

15 Q Let's talk about these LILCO modules, these
16 LILCO workbooks. You have seen the workbooks, haven't you,
17 Mr. Keller?

18 A Yes, I have.

19 Q Would you agree with me, Mr. Keller, that it is
20 much easier for a person to sit there and get the answers
21 correct to the kinds of questions asked in the review
22 exercises if they are allowed to have that workbook open and
23 to look through it as they are answering the questions?

24 A If I knew that the individual did, indeed, look
25 back and forth -- you are telling me -- having me make an

1 assumption that they were allowed to do this?

2 Q Yes, sir.

3 A Okay.

4 I do not know that they did, in fact, do this.
5 And if -- if I make the assumption that they did, in fact
6 do this, that each of the individuals, as he was filling
7 out his workbook, did in fact page back and forth and look
8 up the material in the workbook and then transfer that
9 answer to the back of the book, then I would be surprised
10 with the number of inaccurate answers that I saw.

11 Q Now one last question, I hope, Mr. Keller.

12 Ms. Monaghan asked you if you were able to
13 verify that LERO trainees made up the training sessions
14 they had missed.

15 I want to make it clear, during the spot check
16 you did not verify anything, did you? You verified that
17 the paper LILCO had may be in good order, but you did not
18 go beyond that paper provided to you by LILCO, isn't that
19 correct?

20 A When we say that an individual participated in
21 a particular training session, we took as an indication
22 that that individual had indeed partaken of that training,
23 his signature on the page. Okay?

24 No, I did not go back in time with a time machine
25 and go into the room and see if he was there. Okay?

mm4

1 When an individual did not sign the page in
2 which his preprinted computer-based name was on the paper,
3 we went to another log where he had signed, and by that
4 same indication we concluded that he had taken that
5 training session, the makeup session or a later session.
6 But all we were looking at is pieces of paper.

7 Q And for whatever reason, Mr. Keller, you relied
8 on the paper prepared and presented to you by LILCO?

9 A Not presented to me. We selected, Mr. Glass and
10 I, we selected. We asked which pieces of paper we wanted
11 to see, and in every case LILCO was able to supply the
12 piece of paper we asked to see in a timely and expeditious
13 manner.

14 MR. MILLER: Thank you.

15 BY MR. MC MURRAY:

16 Q Mr. Keller, you told Ms. McCleskey a few minutes
17 ago that you thought it would be unlikely that background
18 levels would reach 50 cpm at a monitoring center in the event
19 of an emergency at Shoreham.

20 Do you recall that?

21 A (Witness Keller) Yes, I do.

22 Q You would agree with me, wouldn't you, that
23 background levels can rise not only because of passage of
24 the plume, but also deposition of material in the monitoring
25 area caused by people bringing it in on their shoes, clothing,

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1 bodies, et cetera?

2 A That is correct.

3 Q And that could cause background to rise above
4 50 cpm, correct?

5 A What I said was that it was unlikely. I didn't
6 say it was impossible.

7 Q Your testimony doesn't change at all your
8 opinion about the inappropriateness of conducting monitoring
9 above 50 cpm background level, correct?

10 A The fact that it is unlikely doesn't mean that
11 you should do it, should it occur.

12 Q Do you think it is unlikely that an accident
13 would occur that would have offsite consequences? Correct?

14 A Unlikely, yes.

15 Not impossible, or else we wouldn't be here.

16 Q Nevertheless, you have to have an offsite plan,
17 correct?

18 A That's correct.

19 Q This is directed to all members of the panel.

20 Since our last discussion on the relocation center
21 issues, have you discussed the issue of relocation centers
22 with anyone from LILCO, or representing LILCO?

23 A (Witness McIntire) No.

24 Q So the scope of your knowledge is still what we
25 discussed a couple of days ago, correct?

1 A (Witness Kowieski) Yes, that's correct.

2 Q Mr. Kowieski, I will direct these questions to
3 you, but anybody feel free to jump in.

4 On the issue of letters of agreement,
5 Ms. McCleskey referred you to transcript page 14,222 where
6 you stated that we would expect a letter of agreement, or
7 letters of agreement between the utility and the facility.

8 Do you recall that, Mr. Kowieski?

9 A Yes, I do.

10 Q And do I understand it now that you are changing
11 your testimony to say that you would only expect the
12 letter of agreement between the Red Cross and relocation
13 center facilities?

14 A (Witness McIntire) I think a proper characteriza-
15 tion would be with clarifying testimony.

16 A (Witness Kowieski) What we would expect, we
17 would expect an unbroken chain between the utility and the
18 Red Cross.

19 Q So you are changing your testimony from --

20 A I am just adding, supplementing my testimony.

21 Q Nevertheless, I believe you said you would expect
22 a signature page in the plan?

23 A That's correct.

24 Q And this signature page would have the signatures
25 of people in charge of operating these relocation centers, or

mm7

1 in charge of those facilities?

2 A That's correct.

3 Q The owners or the management, something like that?

4 A Management.

5 Q And that signature page would say something
6 along the lines of "our facilities will be available in the
7 event of a radiological emergency at Shoreham"?

8 A Right. Then we would expect a copy of the
9 letter to be available for our files.-

10 Q A copy of the letter of agreement between the
11 Red Cross and the facility?

12 A Unbroken chain between the facility, LILCO and
13 the Red Cross.

14 Q So the whole chain?

15 A Right.

16 Q Okay. So what you are saying is, there have to be
17 these letters, they just don't have to be in the body of
18 the plant?

19 A That's correct.

20 Q And as I understand you, also, the letter of
21 agreement would also -- because of the nature of a radiologi-
22 cal emergency would have to state the understanding that the
23 facility would be available for radiological emergency,
24 correct?

25 A That's correct.

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1 Q Now -- and we are talking about -- strike that.

2 A (Witness Keller) To clarify. I believe I recall
3 in the questioning just earlier, that the potential was
4 raised for pure shelter facilities, that everything having
5 to do with radiological -- anything vaguely radiologically
6 inclined, would occur at, for lack of a better word, a
7 primary relocation center. And that if, for whatever reasons,
8 that primary relocation center did not have sufficient
9 space to house those people who had been proven to be clean,
10 the shelter areas, the shelter centers, okay, could be set up.

11 I'm not sure, and I guess we'd have to think
12 about it longer, whether or not those shelter areas would
13 have to have this understanding about a radiological emergency,
14 because really all they are doing is sheltering people who
15 have already been proven to be free of contamination.

16 So, it is strictly a housing.

17 But, certainly, those relocation centers at
18 which the monitoring and potential decontamination is to
19 occur, there has got to be something in the letter between
20 the Red Cross and LILCO to indicate that everybody understands
21 that this is going to happen and how it is going to happen and
22 how it is going to function.

23 Q Mr. Kowieski, when you say though that there has
24 to be a signature page, it would have to include any of
25 those shelter facilities, management of those shelter

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1 facilities that Mr. Keller was talking about, wouldn't it?

2 A (Witness Kowieski) That's correct.

3 Q And so they would be stating on that signature
4 page that they were making their facilities available for
5 a radiological emergency at Shoreham, correct?

6 A I would expect so.

7 A (Witness McIntire) Maybe if I could clarify.
8 I don't think we are the point in the proceeding, as
9 Mr. Keller differentiated between the shelters and the Red
10 Cross, that we would require the Red Cross to change their
11 normal letters of agreement which they have with these
12 facilities. We are just not at the point to make that
13 judgment.

14 So I want to leave that open that that is a
15 possibility that the current Red Cross procedures might be
16 acceptable, for shelters only.

17 (Witnesses conferring)

18 Q Are you gentlemen all done?

19 A Yes.

20 Q Just one last question about the signature page,
21 Mr. Kowieski.

22 Would this be -- we have already established it
23 would be signed by management of the shelters, or ownership
24 of the shelters. Would it be signed -- would the other
25 half of the agreement be signed by LILCO or the Red Cross,

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1 or you just wouldn't care as long as it is an unbroken
2 chain?

3 A (Witness Kowieski) Again it depends how -- if
4 you describe the chain of facilities made available to LILCO
5 and with the involvement of the Red Cross, and how the Red
6 Cross would interact there, Mr. Keller already described,
7 as long as the chain is not interrupted, as we know that
8 the facility would be available.

9 So, the signature page, or pages should accommo-
10 date this.

11 Q And you in your review of the plan would not
12 consider a facility available unless the signature of the
13 owner or manager was on that signature page, correct?

14 A That's correct.

15 Q Thank you.

16 Let's go to the issue of distance from the EPZ.
17 Mr. Keller, on -- I guess it was two days ago you said that,
18 and now you said it was an off-the-top-of-your-head remark,
19 but that you thought 20 miles from the EPZ would be about
20 the boundary beyond which you would not consider a relocation
21 center to be adequate. Correct?

22 A (Witness Keller) I think I had said --
23 previous to that we had had some discussion, and I think
24 I said it would depend on the particular circumstances of
25 how the plan is organized. But that number seemed like a

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1 reasonable number.

2 Q You have modified your testimony today to say
3 that you would consider facilities beyond that 20-mile
4 distance to be adequate, correct?

5 (Witnesses conferring)

6 A It looks like -- it appears that we were speaking
7 somewhat hypothetically in that we were talking about a
8 distance from "a" plant, not necessarily from the Shoreham
9 plant.

10 And I think this goes along with what I had
11 said the other day when we were discussing it, that it
12 would depend on a specific situation. As I said earlier,
13 since the Shoreham plan -- if we now begin to focus in on
14 Shoreham -- since the Shoreham plan uses the concept of
15 transfer points for the evacuees, this leads to the
16 evaluation that the people, the evacuees are being brought
17 from the high-risk area into a lower-risk area, or outside
18 the EPZ in some cases.

19 Now the time that takes to get them from that
20 point to their shelter becomes somewhat less important,
21 because they are out of the risk zone. Whereas, in a plan
22 which uses the concept that the evacuation buses, the
23 ones that actually go around and pick up the evacuees
24 have to drive all the way to the relocation center and
25 particularly the plans which use multiple bus runs, then

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1 one at 20 miles, that would probably be as far out as I would
2 like to go.

3 But I think you have to look. What I said earlier
4 was we would not reject out of hand, hopefully, anything.
5 But, if it were 20.5 miles, no, you wouldn't automatically
6 reject it. You would have to look at the particular situation.

7 Q So with your statement that I would think 20 miles
8 would certainly be too far from "a" plant, that was a
9 statement that was more general in nature, and specific to
10 Shoreham, right?

11 A Yes. And I think on line 6 we were talking from
12 the EPZ, not from the plant.

13 Q I'm sorry, from the EPZ.

14 A There is a ten-mile difference, approximately.

15 Q Right. I understand that.

16 So, I take it in a nutshell your concern is the
17 distance necessary for buses to travel within the EPZ TO
18 the relocation center?

19 A Can you remove the evacuees who are going to
20 be required to use buses? Particularly the people with their
21 own cars is not so much of a problem, because they can
22 drive directly out of the EPZ. There is no waiting or
23 anything like that. Can these people be removed in a timely
24 fashion so that they can be removed from the potential risk
25 in a timely way.

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1 And, as I say, it is more important if a plan
2 uses the concept of multiple bus runs, then certainly I
3 would think you would have to put more weight on the amount
4 of time and the distance.

5 Q Are you aware of where the transfer points are
6 within the EPZ?

7 A The transfer points are on the map in Appendix A
8 of the plan, yes.

9 Q Some of those transfer points are on the eastern
10 portion of the EPZ, correct?

11 MS. MC CLESKEY: Objection.

12 I don't think these questions are within the
13 scope of any of the contentions we have been talking about
14 with the FEMA witnesses this week.

15 MR. MC MURRAY: Judge Laurenson, they certainly
16 are. The witness has stated that his concern is one of
17 the distance between the transfer points and the relocation
18 center. And I am trying to explore that concern.

19 JUDGE LAURENSEN: I think Mr. Keller raised the
20 question of transfer points, so it is relevant.

21 Objection is overruled.

22 WITNESS KELLER: I may have misspoken. They may
23 or may not be on the maps, but there certainly is a list
24 of the transfer points in the plan.

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BY MR. MC MURRAY:

Q Is it your understanding some of those transfer points are on the eastern part of the EPZ?

(Witnesses conferring)

A (Witness Keller) Yes, it is my understanding that some of the transfer points are on the eastern part of the PEZ, yes.

Q Is it also your understanding that all of the relocation centers LILCO specifies in its plan are to the west of the EPZ?

A Which version of the plan?

Q That's a pretty good question, actually.

Let's talk about Revision 3, whatever you have reviewed, which I believe is Revision 3.

A Yes.

(Witnesses conferring)

Q Assume for me if you will, then, rather than look this all up, assume for me Mr. Keller, that all of the relocation centers are to the west of the EPZ.

A Okay.

Q Now, does this raise a concern then about the distance between those transfer points on the eastern part of the EPZ and the need to travel considerable distance to get to relocation centers to the west of the EPZ?

A As I said, since this plan uses the concept of

mml5

1 transfer points, where the people are taken out of the high-
2 risk zone, I am not as concerned about the fact that they
3 will drive a longer distance, i.e. from the eastern part
4 of the zone around to the western part of the zone, than I
5 would be if these people were being evacuated directly
6 from their homes.

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1 Q Is that true even though they wouldn't be
2 monitored, and possibly decontaminated before they got to the
3 relocation centers?

4 A It is true that if the individuals, evacuees,
5 were contaminated prior to getting on the bus, that the longer
6 transit distance would require -- the contamination would
7 remain on these individuals for a longer amount of time
8 because of the longer drive.

9 Q That would potentially be a concern of yours
10 as to where the relocation center -- the monitoring and
11 decontamination center would be located, correct?

12 A One has to deal with realities. If there are
13 facilities which are available, which are suitable for
14 monitoring and decontamination and housing on the eastern
15 part of the zone, it would be preferable that there be some
16 in that part of the plan. If there are no facilities
17 available, and the only ones that are available are on the
18 western part of the zone -- if there is no facility available
19 on the eastern part, there is no facility available.

20 And, therefore, you use whatever is available.
21 As a general rule, if an individual becomes contaminated,
22 it is preferable, more desirable, that the presence of
23 this contamination be identified as quickly as possible, and
24 the contamination be removed as quickly as possible.

25 Q Mr. Keller, I think you said earlier that

1 based on your knowledge of the LILCO plan, you wouldn't
2 quibble if a facility was 20.5 miles from the EPZ instead
3 of 20 miles.

4 At what point would you begin to get concerned,
5 based on your knowledge of the LILCO plan?

6 MS. McCLESKEY: Objection. Asked and answered
7 several times. The witnesses have discussed their 20 mile
8 limit.

9 JUDGE LAURENSEN: Overruled.

10 MS. McCLESKEY: In that case, I object to the
11 question as being vague, because Mr. McMurray has not given
12 any of the factors the witnesses have stated they would
13 consider in determining how far was too far.

14 JUDGE LAURENSEN: Overruled again. I think
15 that the question is at what point they do become concerned,
16 and they can qualify their answer in any way they see fit.

17 BY MR. McMURRAY: (Continuing)

18 Q Are you gentlemen ready?

19 A (Witness Keller) I think you have to look at
20 on a case-by-case basis. The general precept is, as I said,
21 ideally you would like to identify the presence of contami-
22 nation as quickly as possible, and to remove that contamination
23 as quickly as possible.

24 You also must have a suitable facility in which
25 these things can be accomplished, and you have to then balance

1 the availability of facilities with the time required to get
2 to available facilities and make a judgment, and since the
3 transfer point concept is used here, and the buses are not
4 required to go back in and get more evacuees, I would be
5 less concerned than I would be if that were the case, as
6 it is in some other plans.

7 I would hesitate to put any numeric number down
8 because of this -- in this particular plan we are using
9 transfer points.

10 Q Doesn't there come a point though, Mr. Keller,
11 where it is just absolutely too far from the edge of the
12 EPZ?

13 MS. McCLESKEY: Objection, asked and answered.

14 MR. McMURRAY: The witnesses said that a balance
15 needs to be struck. I am just trying to find out when the
16 balance is tipped.

17 MS. McCLESKEY: The witness specifically said
18 he would want to look at it on a case-by-case basis.

19 JUDGE LAURENSEN: I think this is proper
20 cross examination. Overruled. You may answer.

21 WITNESS KELLER: Yes, I would certainly think
22 there is some point where it is absolutely too far from the
23 EPZ.

24 BY MR. McMURRAY: (Continuing)

25 Q Now, can you put your finger on that point?

1 A Again, I would have to look at it on a case-by-
2 case basis. Certainly I would think California is too far
3 out of hand, okay?

4 On a case-by-case -- probably -- anything beyond
5 New York City is too far in that direction. You would have
6 to look at it on a case-by-case basis. As I tried to say,
7 facilities have to be available to do the job.

8 I don't know where those facilities are.
9 Certainly you would like to pick the one that is as close
10 as possible, and if I was aware of the fact there was one
11 at 25 miles that was available and usable, and LILCO proposed
12 using one at let's say 40 miles, I might in that case say
13 that the one at 40 miles was too far, because there is one
14 at 25 miles.

15 If there are no facilities, and I don't know,
16 available to do this kind of thing within 40 miles, then I
17 suppose I would say 40 miles was acceptable.

18 A (Witness McIntire) Our main concern is not the
19 distance between localities, but what is the best method to
20 protect the health and safety of the public living within the
21 EPZ.

22 Q Mr. Keller, are you aware of any primary
23 monitoring and decontamination centers for any other nuclear
24 power plant offsite plan which is as much as forty miles away
25 from the edge of the EPZ?

(Panel confers.)

1
2 A (Witness McIntire) While Mr. Keller is thinking,
3 I would just like to state that we are also not aware of any
4 other plants where facilities have been prohibited by -- to
5 be used by the utility by governments.

6 A (Witness Keller) The reason I stopped to think,
7 it is a matter of scale.

8 Q I am talking in miles.

9 A Yeah, I know. My recollection is that the Palo
10 Verde primary monitoring center is on the order of that
11 distance.

12 Q That is your recollection, but you don't really
13 know?

14 A No, I do not keep that kind of detail about.

15 MR. McMURRAY: Thank you. Judge Laurenson,
16 I have no further questions.

17 JUDGE LAURENSEN: Anything else? Mr. Zahnleuter?

18 MR. ZAHNLEUTER: No questions.

19 JUDGE LAURENSEN : Anything further from LILCO?

20
21 MS. McCLESKEY: Yes, sir, very briefly.

22 CROSS EXAMINATION

23 BY MS. McCLESKEY:

24 Q Mr. Kowieski, when you talk about a signature
25 page, are you -- in the context of our discussions about

1 relocation center agreements between the red cross and specific
2 facilities, are you talking about including in the plan
3 signature pages from the agreements that exist between the
4 red cross and the facilities to verify that the red cross
5 has the agreements?

6 A (Witness Kowieski) That is correct.

7 Q And gentlemen, Mr. McMurray asked you if you were
8 aware -- I beg your pardon Mr. Kowieski did you want to add
9 something.

10 A (Witness Kowieski) What I should add to my
11 statement, there should be a brief description the nature of
12 agreement.

13 A (Witness Keller) In addition to the signature
14 page, since the red cross is a quasi-governmental agency,
15 right? There is a waiver in 0654 that says for those kinds
16 of agencies a signature page with a brief description of the
17 contents is sufficient, but again, the whole agreement should
18 be on file at the FEMA office.

19 Q Could the brief description be in the letter from
20 the red cross to LILCO?

21 A (Witness Kowieski) I don't see any problem, sure.

22 Q Mr. McMurray asked you whether you all were aware
23 of any plans for the relocation centers were located in the
24 vicinity of forty miles away, or -- I think I have just
25 approximated his question, but do you recall the discussion?

1 A (Witness Keller) Yes.

2 Q Have any of you gentlemen reviewed the plans
3 for Surry or Calvert Cliffs nuclear power plants?

4 A No, we have not.

5 MS. McCLESKEY: Ms. Monaghan has a question.

6 CROSS EXAMINATION

7 BY MS. MONAGHAN:

8 Q Mr. Keller, isn't it true that during your
9 deposition you stated that it was your impression that
10 approximately ninety percent of the answers to the question
11 and answer portion of the workbooks were correct?

12 A (Witness Keller) That is correct.

13 MS. MONAGHAN: No further questions.

14 JUDGE LAURENSEN: Any redirect, Mr. Glass?

15 MR. GLASS: No redirect.

16 MR. McMURRAY: Judge Laurenson, I think there
17 is some confusion on the record about the nature of a signature
18 page, and I would like to just ask a few focused questions on
19 that issue.

20 MS. McCLESKEY: I think we have had many focused
21 questions. I don't think there is any confusion, and I object
22 to any further questions on that subject.

23 MR. McMURRAY: I think there is plenty of
24 confusion. The way I understand it, the signature page is
25 basically just ripping off the back pages of the letters and

1 sticking them on a signature page, rather than the signature
2 of the manager or owner of a facility saying that: My
3 facility will be available for use by the red cross, or
4 LILCO in the event of an emergency.

5 JUDGE LAURENSEN: Perhaps I don't understand the
6 significance of all this in light of Mr. Kowieski's statement
7 that FEMA requires that the full agreement be on file in our
8 office.

9 MR. McMURRAY: Well, because the nature of these
10 agreements, as I understand it, with the red cross is that
11 these facilities may be available as shelters. Some of them
12 are qualified, some of them as we have seen them say it
13 depends on the disaster and whether we can respond and
14 stuff like that.

15 And they don't specify radiological emergency.
16 I think that the question is whether or not these shelter
17 owners know that they are being asked to implement the LILCO
18 plan, and whether or not the signature page will show their
19 knowledge of that.

20 From what I understand Mr. Kowieski is now
21 saying, this generic agreement which is very vague between
22 the red cross and the shelter, the back page with the signature
23 on it will just be torn off and the signature will be pasted
24 onto a signature page, and that will become the signature page.

25 At least that is the way I thought he just

1 described it now, in response to Ms. McCleskey's question, but
2 I don't think that is what he meant.

3 MS. McCLESKEY: I disagree with the character-
4 izations Mr. McMurray is making, and also I would like to
5 note that these witnesses stated on the record that they have
6 no knowledge of our July 30th testimony, and have no idea
7 what we are talking about, whether it is hypothetical or
8 real, and they haven't seen the agreements that you have
9 seen, Mr. McMurray.

10 MR. McMURRAY: The witnesses are here. I think
11 Mr. Kowieski could clear this up very quickly.

12 MS. McCLESKEY : I don't understand the point
13 that needs to be cleared up, without his reading every single
14 one of the agreements and telling you whether he likes them
15 or not there is no further testimony he can give.

16 MR. McMURRAY: The issue is the format of the
17 signature page.

18 JUDGE LAURENSEN: We will allow limited inquiry
19 into this area.

20 BY MR. MILLER: (Continuing)

21 Q Mr. Kowieski, you have heard this whole colloquy,
22 and I guess we don't need to go over all of this again. Is
23 it true that the signature page is something that bears the
24 signature of the relocation center manager or owner?

25 A (Witness Kowieski) That is correct.

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1 Q And it signifies his understanding, I take it,
2 that his facility may be available to the red cross, or to
3 LILCO in the event of a radiological emergency at Shoreham,
4 correct?

5 A That is correct.

6 Q So, you would expect that the manager or owner
7 would know specifically that he may be asked to participate
8 and implement -- participate in and implement the LILCO
9 plan.

10 A Yes. As a matter of fact, already we testified
11 that we would require the complete letter of agreement would
12 be placed in our file. We will evaluate letter of agreement.

13 MR. McMURRAY: Thank you, Judge Laurenson.

14 MS. McCLESKEY: Judge Laurenson, I now have a
15 question.

16 JUDGE LAURENSEN: Proceed.

17 CROSS EXAMINATION

18 BY MS. McCLESKEY:

19 Q Mr. Kowieski, if the relocation center is being
20 used as a shelter, there is no monitoring or decontamination
21 being done, and the agreement between the red cross and the
22 relocation center says you may use my facility as a shelter
23 in a disaster, is that sufficient for FEMA?

24 A (Witness McIntire) As I testified beforehand,
25 we have not, at this point, made a determination regarding

1 the normal red cross shelter letters that they get from each
2 shelter on how it would relate to the implementation of the
3 LILCO plan for those cases that you describe. It would be
4 used strictly for sheltering. We are in no position to go
5 any further than that at this point.

6 Q Mr. McIntire, are you aware of any other plans
7 where the red cross is relied upon to provide shelters, and
8 those shelters don't include monitoring or decontamination?

9 A (Witness Kowieski) As a matter of fact,
10 radiological emergency response plans in New York State are
11 based on the concept that there would be reception center
12 where actually screening of evacuees would be conducted, and
13 when -- at the point that it is determined that evacuees are
14 clean, they will be sent to another facility called
15 congregate care center.

16 A (Witness Keller) And these congregate care
17 centers are, indeed, operated by the red cross.

18 Q Now, at the congregate care centers in New York
19 State, have you required the red cross to go out and get
20 separate agreements, different from the ones they already have
21 with those centers, saying: Yes, my facility supports
22 participating in a radiological emergency, and in a radio-
23 logical emergency, we will have a shelter here?

24 MR. McMURRAY: Judge Laurenson, I object. This
25 is getting off the signature page format, which is the whole

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point of our questions, so she has gone beyond the scope of
my questioning.

MS. McCLESKEY: It is directly related to it.

JUDGE LAURENSEN: Overruled.

End 11.
Sue fols.

#12-1-SueT

A (The witnesses are conferring.)

2 (Witness Kowieski) Our recollection, the
3 panel's recollection, is that we did not ask for separate
4 letters of agreement.

5 Q One last question. I stated it for the record,
6 but I would like for the testimony to come from the
7 witnesses.

8 It's true, isn't it, that none of you have
9 ever seen or had anyone describe to you the contents of
10 LILCO's revised testimony that was filed two weeks ago
11 regarding relocation centers?

12 A (The witnesses are conferring.)

13 (Witness McIntire) The panel has no knowledge
14 of that testimony.

15 MS. MC CLESKEY: Thank you very much. Those
16 are all my questions.

17 JUDGE LAURENSEN: Any other questions?

18 (No reply.)

19 All right. This completes the testimony of
20 the FEMA witnesses. We thank you for your testimony.

21 I think in light of the time now, we -- although
22 it might shorten the argument now to hold it before lunch,
23 it might also be a bit unfair. So, we will take our
24 luncheon recess now. We will convene this afternoon and
25 hear argument on the motions that are listed on the

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2 agenda, and we also will hold discussion on all the other
3 matters.

4 Is there any need to go over that agenda now,
5 or does everyone know it?

6 (No reply.)

7 All right. We will take our luncheon recess
8 now.

9 (Whereupon, the hearing is recessed at 12:21 p.m.,
10 to reconvene at 1:49 p.m., this same day.)
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A F T E R N O O N P R O C E E D I N G S

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(1:49 p.m.)

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JUDGE LAURENSEN: We are back in session. The first item on the agenda this afternoon is the LILCO motion to admit revised testimony on the relocation centers. And in conjunction with that, the joint motion of Suffolk County and Governor Cuomo for summary disposition of those same contentions and opposition to LILCO's motion to admit the revised testimony.

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We don't have any response to this from the Staff at this point as to the LILCO motion, so I guess we can start with that.

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MR. BORDENICK: Judge Laurenson, unless I'm mistaken, I think I had indicated we had no objection to it.

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JUDGE LAURENSEN: Oh, you are right. There was a letter. You are correct about that. Okay. So, Staff does not oppose LILCO's motion.

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21

Now, as to the joint motion for summary disposition, let me just ask County and State how they propose to proceed with this?

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MR. MILLER: Judge Laurenson, the County believes that the arguments for a summary disposition on the relocation center issues are fairly well set forth in the written document filed with the Board. I would welcome the opportunity

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2 to spend a few minutes bringing to the Board's attention our
3 understanding both of what the FEMA witnesses have said
4 this week, which would support the motion for summary
5 disposition, as well as facts revealed to the County this
6 Monday when Mr. Rasbury of the Nassau County Chapter of
7 the Red Cross was deposed.

8 JUDGE LAURENSEN: The problem I have with that
9 is that you filed this motion on Monday of this week, and
10 the rules say that everybody gets twenty days to respond.

11 Now, unfortunately this matter is currently
12 scheduled to come up at the hearing next Tuesday. That's
13 really what my question was addressed to. How do you propose
14 to deal with that in light of the provisions of 10 CFR 2.749.A
15 concerning summary judgments and particularly the last
16 sentence which I will read. It says, "The Board may dismiss
17 summarily motions filed shortly before the hearing commences
18 or during the hearing if the other parties or the Board would
19 be required to divert substantial resources from the hearing
20 in order to respond adequately to the motion."

21 And that's really the question that I'm raising
22 at this time, whether that is going to be the end result if
23 we proceed with your motion, or whether we should treat this
24 the same way we did with the LILCO motion for summary dispo-
25 sition of the strike.

MR. MILLER: Judge Laurenson, I guess I have

#12-5-SueT₁

1 two responses. First, I understood -- at least, it was
2 my understanding from discussions that we had Tuesday
3 evening when we had all counsel present, that LILCO intended
4 to respond orally to our motion for summary disposition
5 today when we discussed all the other procedural matters.

6 So, I have assumed that LILCO intended to go
7 forward with an oral argument so that the Board could rule
8 and the issue could go forward if necessary next week. Of
9 course, we would hope that it wouldn't be necessary because
10 the Board would rule in our favor.

11 Also, Judge Laurenson, as you are aware, there
12 is a provision within Section 2.749 which we think gives
13 good cause for the Board to proceed on the motion. In light
14 of the fact that even though we are in the midst of hearings,
15 the issues have been before this Board for a long time.
16 LILCO has filed many different pieces of testimony. They
17 are well familiar with the facts. They are capable of going
18 forward.

19 And, as I've said, they have indicated to us
20 that they intended to go forward. And I would say also
21 that it's my understanding from the conference of counsel
22 last week that the Board indicated responses to LILCO's
23 motion to admit its revised testimony were due on Monday
24 of this week. And we filed the summary disposition motion
25 within that time frame.

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2 We didn't receive the revised testimony by LILCO
3 until July 31st. And I think in that regard also the motion
4 was filed in a timely manner.

5 JUDGE LAURENSEN: I'm more concerned about how
6 it impacts on the hearing schedule, since we are talking
7 about next Tuesday for this testimony if we go forward with
8 it.

9 MR. MILLER: I guess the impact on the schedule
10 would be that the Board could hear the arguments, and if
11 the Board ruled in favor of the County and New York State,
12 of course, then the matter is resolved and there is nothing
13 to be heard next week. On the other hand, if the Board
14 ruled against the County and New York State, this schedule
15 would stand and we would continue with the witnesses
16 scheduled for next week.

17 JUDGE LAURENSEN: Ms. McCleskey.

18 MS. MC CLESKEY: Judge Laurenson, Mr. Miller's
19 representations regarding our statements about making oral
20 argument today are accurate. I'm prepared to go forward.

21 And my first ground for asking you to deny the
22 summary disposition motion is the 2.749.A sentence that
23 you have already read into the record.

24 I can also go forward on the merits of the
25 summary disposition motion. Of course, there are no
affidavits yet filed. But we can take care of that by

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2 relying upon the proffered testimony and perhaps filing
3 affidavits later if we like.

4 The Board had indicated earlier this week that
5 we wouldn't necessarily be arguing the merits. So, I'm
6 at your disposal as far as that goes. I think it's sensible
7 to go forward with the testimony next Tuesday.

8 JUDGE LAURENSEN: I'm trying to find out what
9 advantage the County and State see to proceeding with this,
10 on this motion as opposed to just going forward with the
11 hearing testimony on Tuesday. And I understand you would
12 like to win the whole ball game on this question first,
13 but in terms of saving time and so forth which is the purpose
14 of summary disposition, I just wonder whether we are achiev-
15 ing any of those purposes.

16 MR. MILLER: I suppose, Judge Laurenson, it's
17 the County's position that the motion should be heard and
18 ruled upon before we go ahead with the testimony by LILCO's
19 witnesses if we are ever going to have to do that, because
20 if the Board rules in our favor there would be no need to
21 hear testimony from LILCO's witnesses. The issue would be
22 resolved.

23 And from that standpoint, efficiency would
24 dictate handling this matter at this time. We could just
25 avoid duplication. I mean, to hold a hearing and then,
I guess if you play out the scenario, for the Board to rule

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1 in our favor and to dismiss the matter on the basis of
2 summary disposition would have made unnecessary holding the
3 two days of hearings which are presently scheduled.

4 JUDGE LAURENSEN: I am still concerned about the
5 County's position on this testimony. On one hand, you are
6 relying on it in support of your motion for summary disposi-
7 tion; and, then on the other hand, you are moving to strike
8 it and not to admit it into evidence.

9 It seems to be inconsistent positions of the
10 County. Or, at least I don't understand how it is consis-
11 tent.

12 MR. MILLER: Well, we've relied on the testimony,
13 Judge Laurenson, because there has been nothing else to
14 rely upon. As you are well aware, the LILCO plan, even this
15 latest version, according to the revised testimony is going
16 to be changed. We have not, of course, seen anything beyond
17 Revision 4.

18 We have seen this revised testimony, and we
19 think if this is the basis for LILCO's proposal and approach
20 to the relocation center issues, it does not comply in any
21 way with the requirements of NUREG 0654. And that's the
22 basis for our motion. In essence, on our motion to not
23 admit the testimony and also for our motion for summary
24 disposition.

25 We didn't have anything else to work with.

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2 JUDGE LAURENSEN: On the procedural question,
3 before we get to the merits, does the Staff have a
4 position on this?

5 MR. BORDENICK: I agree with LILCO. When I
6 first got this motion on Tuesday up here, the first thing,
7 of course, that came to my mind was the provision that the
8 Board has already read into the record.

9 As far as the merits of the contention, I was
10 also prepared to argue it. However, I think that procedurally
11 what the County has done, they have more or less placed,
12 assuming the Board does not summarily dismiss the motion
13 under 2.749, they have more or less placed LILCO and to a
14 lesser extent the Staff on the horns of a dilemma.

15 If, on the one hand, we want to take the full
16 time to respond to the motion in writing, then obviously we
17 are going to delay the close of the hearing. To the extent
18 that we want to respond verbally so as not to delay the
19 conclusion of the hearing, LILCO has indicated they are
20 prepared to do that, and I am, too.

21 I think, as far as I'm concerned, as I understood
22 the Board's question of the County, I don't really see any
23 difference between the situation with respect to the
24 County's motion for summary disposition on this issue and
25 LILCO's motion for summary disposition on the strike issue.
And I really haven't heard in Mr. Miller's response what the

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distinction is.

2 MR. MILLER: Judge Laurenson, there are two
3 distinctions. The first distinction is the very provision
4 read into the record by the Board when we first started
5 this argument makes clear -- it says that if substantial
6 time would have to be diverted then the Board can summarily
7 dismiss the kind of motion that the County and State have
8 filed.

9 In our opinion, substantial time and resources
10 do not have to be diverted from the hearing process. The
11 facts have been before this Board for over half a year.
12 LILCO is well aware of the facts. LILCO has brought these
13 facts to the Board's attention through revised testimony.

14 We are now saying that testimony and the LILCO
15 plan doesn't raise issues of dispute, and the Board can
16 rule and avoid the necessity of a hearing.

17 Further, Judge Laurenson, I think it is very
18 important and relevant to the Board's determination on
19 this that the parties have met and agreed earlier this
20 week that they would be willing to respond and go forward
21 on this, this week, today. And, therefore, it seems to me
22 there is no comfort to LILCO or to anyone to say: We want
23 our twenty days. And the Board should wait on this matter.

24 And that's not what I hear Ms. McCleskey saying.
25 She is saying: We are ready to go forward and argue the

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merits.

2 MS. MC CLESKEY: Judge Laurenson, I think it's
3 key to note that two of the three allegedly undisputed
4 material facts there attached to the summary disposition
5 motion come from the proposed testimony, and those facts
6 are not in the record and will not be if the testimony is
7 not admitted. And, so I think we have got a real muddle
8 here.

9 And I don't know how you propose to get those
10 facts into the record without going forward with the
11 testimony. And once the witnesses come, you don't need
12 summary disposition anymore.

13 In addition, the County, from this discussion,
14 I gather thinks that if the proposed testimony is not
15 admitted that LILCO is not submitting any testimony on
16 the relocation center issues. And I would just like to
17 make clear, in case it isn't, that there is prefiled testi-
18 mony on the three issues and that we will go forward on that
19 old testimony if the proposed testimony is not admitted.

20 Our motion was to withdraw that old testimony and
21 at the same time replace it with the proposed testimony.
22 And if the proposed testimony is not admitted, we have no
23 intention of withdrawing the other testimony.

24 MR. MILLER: That wouldn't resolve anything
25 though, Judge Laurenson, because based on the facts of that

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2 old testimony, our motion for summary disposition would
3 stand.

4 JUDGE LAURENSEN: We also heard testimony this
5 week from the FEMA witnesses concerning relocation centers,
6 and I would think we would have to evaluate that testimony
7 in light of this motion to resolve it. And I'm talking
8 about the time that the Board is going to have to spend
9 in ruling upon the motion. I understand that the parties
10 may be prepared to go forward with an oral argument now,
11 but as everyone indicates there are no affidavits before us
12 at this time, there is no testimony on file that has been
13 received in the record at this time.

14 It just seems to me -- and I'm raising it really
15 as a question, whether it isn't indeed more expeditious
16 to go forward next Tuesday and take this testimony and treat
17 it like all the rest of the evidence, assuming that we
18 admit this. Let's make that assumption first.

19 But, anyway, there is testimony that has been
20 filed by LILCO now and then treat this along with the
21 findings, proposed findings, of fact like all the rest of
22 the contentions.

23 MR. MILLER: Judge Laurenson, I just want to make
24 sure I understand something. It's the County's understanding
25 from reading Section 2.749 that affidavits are not required
necessarily for these motions. And, of course, the County

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2 did not submit such affidavits with this motion. I think
3 it's the County's position that the pleadings on their face,
4 LILCO's revised testimony, LILCO's plan, and our motion
5 for summary disposition make clear there are no issues in
6 dispute between the parties and make clear LILCO has not
7 complied with 0654 and the requirements therein; and,
8 therefore, summary disposition is appropriate.

9 And I think we could go forward based on these
10 pleadings.

11 MS. MC CLESKEY: Judge Laurensen, of course, I
12 disagree with that characterization. But, in addition, as
13 a procedural matter this testimony that is relied upon in
14 their statement of material facts is not in the record
15 And I don't know how to get around that except by admitting
16 it.

17 And if the witnesses are going to come, we might
18 as well listen to what they have to say.

19 I would also like to note that the testimony was
20 filed on the 30th, and they did receive it on the 31st.
21 This motion wasn't filed until August 13th. And I think
22 under the circumstances where we had a compelled deposition
23 in the interim, where a witness for the proposed testimony
24 was compelled to be deposed, and that we are now less than
25 a week before the hearings are to start, that that motion
is untimely.

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2 MR. MILLER: Judge Laurenson, I just want to make
3 clear that the witness, Mr. Rasbury, was deposed after the
4 County had prepared and filed its motion. The Board received
5 the motion for summary disposition on Monday. It was Federal
6 Expressed to LILCO on Monday. There was no taking of depositions
7 before the motion had been prepared and filed.

8 And, further, I will repeat, the motion is within
9 the time frame set forth by the Board to respond to
10 LILCO's motion for admission of its revised testimony.

11 MR. ZAHNLEUTER: Judge Laurenson, I would like
12 to add something. Both Mr. Bordenick and Ms. McCleskey have
13 stated that they are willing to address the merits of the
14 summary disposition issue today. I think inherent in that
15 statement is a concession that there has been no problem
16 with timeliness, that there has been no problem with the
17 need for written affidavits.

18 I think it would be expeditious and it would save
19 substantial resources to hear the arguments today, for you
20 to rule today, and then everything would be set as of today.

21 In addition, the testimony that LILCO has sub-
22 mitted on July 30th has not been admitted into evidence,
23 but it is part of the record. It can't be treated as a
24 nullity. It has been served on all parties, and it's just
25 as live as any other pleading is while it's pending.

MS. MC CLESKEY: We may be beating an incredibly

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2 obvious dead horse, but that testimony has not been sworn
3 to by the witnesses or entered into the record. And the
4 facts within it cannot be at the same time disallowed
5 from the record and admitted for the purposes of a summary
6 disposition motion.

7 That defies all logic.

8 MR. ZAHNLEUTER: The testimony is not just
9 admitted testimony. It's appended to a motion.

10 MR. BORDENICK: Also, Judge Laurenson, I would
11 just like to briefly state, perhaps I didn't express it
12 as artfully as I should have, but I am prepared to go ahead
13 on the merits.

14 However, I would like to point out again that
15 I did not know about this motion until Tuesday. Therefore,
16 I didn't bring up all -- I don't have with me all the
17 necessary documents that I would need to fully address
18 this matter as if I were back in Bethesda sitting in my
19 office.

20 And that's precisely the burden that I'm point-
21 ing to that is mentioned in 2.749. And my suggestion to
22 go ahead, or that I'm able to go ahead, and respond to the
23 merits is simply to -- it's the lesser of the two evils
24 posed by the dilemma. I don't want to delay the conclusion
of the hearing.

(The Board members are conferring.)

end #1225
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2 JUDGE LAURENSEN: The Board has conferred and has
3 decided to dismiss this Motion for Summary Disposition
4 pursuant to the authority in Section 2.749(a). That
5 because of the circumstances that this testimony is scheduled
6 to be heard next Tuesday, and in light of the arguments
7 made and the fact that the Board would have to divert its
8 time and attention to a thorough consideration of the issues
9 raised here, it would have the effect of delaying the rest of
10 the hearing.

11 So, we will not hear oral argument on this
12 Motion. This will be treated in the same way as we treated
13 the LILCO Motion for Summary Disposition concerning the
14 strike issues. It will be stricken.

15 Now we still have before us the Motion to Admit
16 the LILCO Revised Testimony, and we have the positions of all
17 Parties on that.

18 Is there anything that we should be aware of that
19 hasn't been stated for the record on that before we decide it?

20 MR. MILLER: Judge Laurenson, I want to make clear
21 that what the County and the State filed is a Motion opposing
22 the admission of the testimony. Of course, we reserve any
23 Motions to Strike that we would file if the testimony is
24 admitted.

25 JUDGE LAURENSEN: I understand that. I am not
attempting to preclude the County from doing that, or the

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1 State. And we will treat your Motion for Summary Disposition,
2 just the second part of it, which is in opposition to LILCO's
3 Motion to File their Revised Testimony.

4 The other matter that we have to decide today, I
5 believe, is the motion of Governor Cuomo on behalf of
6 Dr. Cipriani and Mr. Hines to quash the subpoenas for next
7 Wednesday. The subpoenas were issued by the Board, and am
8 I correct that they have both been served by now?

9 MS. MC CLESKEY: Judge Laurenson, the subpoena on
10 Mr. Cipriani was served. I have been unable to reach the
11 process server this morning to find out whether Mr. Hines'
12 subpoena was served. But, the problem was that he has been
13 on vacation. Apparently Mr. Zahnleuter has also been
14 informed that he is on vacation and he is not physically
15 around to give it to him. But he does know that there is
16 scheduled hearing and that sort of thing.

17 MR. ZAHNLEUTER: That shouldn't be much of a problem
18 because he does know that the date certain is the 22nd, and
19 the Board has issued the subpoenas, I take it.

20 MS. MC CLESKEY: I should note that Mr. Zahnleuter
21 has said the service of process, any problems with it would
22 not be a bar to Mr. Hines' appearing.

23 JUDGE LAURENSEN: In this case we will be
24 deciding this motion under the authority of 10 CFR Section
25 2.720 and particularly subsection (f) dealing with Motions

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1 to Quash the Subpoenas.

2 At our conference of counsel last week in
3 Bethesda, it was specifically stated and agreed to by all
4 Parties, that an oral response would be made to this Motion
5 today, so I think we are ready to hear from LILCO.

6 MS. MC CLESKEY: Yes, sir.

7 The basis of the State's Motion to Quash is that
8 Mr. Hines and Dr. Cipriani's testimony would not be
9 relevant. And LILCO disagrees with that assertion.

10 To the contrary, first Mr. Cipriani and Mr. Hines'
11 are relevant to the proceeding as long as their letters are
12 attached to Suffolk County's testimony to lend foundation to
13 those letters. And if the letters are attached to the
14 testimony and admitted, Mr. Cipriani and Mr. Hines are
15 relevant to the proceeding because they can discuss and
16 give the foundation and background for those letters.

17 In addition, Mr. Cipriani's facility, contrary
18 to the statements in the Motion to Quash, is relied upon by
19 the Red Cross as a shelter, and therefore his testimony
20 regarding his facility and use of it as a shelter is
21 directly related to the proposed LILCO testimony.

22 Mr. Hines' testimony is also relevant. I think
23 it is inherent in the whole issue of relocation centers,
24 particularly as it is developed in this case whether LILCO
25 has picked -- and the Red Cross have picked appropriate

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1 centers for the population. And, as the FEMA witnesses
2 suggested today during cross-examination, one of the questions
3 that you must look at in determining whether the relocation
4 centers are appropriate is what else is available and did
5 you try to get it and are you going to rely upon it?

6 And, Mr. Hines is the manager of a facility that
7 was relied upon by LILCO and is no longer directly because
8 of the asserted unwillingness of that facility to take part
9 in any response under the LILCO plan.

10 And I think that the record should be developed
11 regarding the unwillingness of the facilities that are no
12 longer relied upon.

13 Finally, the contentions themselves still
14 mention all of the facilities. In fact, they go back a
15 couple of revisions of the plan. And I am not suggesting
16 that the County has been dilatory in not amending its
17 contentions or anything of that nature, but I will say that
18 Contention 74 read a little more broadly than the specific
19 facilities which are no longer relied upon, deals with the
20 appropriateness of the location of the relocation centers.
21 And in that context Mr. Hines' testimony would be relevant
22 to the appropriateness of the present relocation centers
23 relied upon by LILCO.

24 Therefore, LILCO moves the Board to reject the
25 Motion to Quash.

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1 JUDGE LAURENSEN: Let me just clarify one point.

2 If Suffolk County withdraws the two letters attached
3 to their testimony, do you still oppose a Motion to Quash the
4 Subpoena?

5 MS. MC CLESKEY: I think that we have proceeded
6 so far that I would oppose any offer by the County to withdraw
7 those letters. I think it would really leave a muddle as
8 to the new testimony that LILCO has filed as to the
9 testimony it is withdrawing. And the history of the
10 relocation centers in this case is going to have to be
11 developed on the record to make any sense about whether
12 what we are doing now is appropriate or not.

13 So, I suppose the short answer is yes.

14 JUDGE LAURENSEN: Mr. Miller, or Mr. McMurray?

15 MR. MILLER: Judge Laurenson, the County fully
16 supports the Motion To Quash filed by the State of New York.
17 I think there are four facts which make the quashing of
18 subpoenas issued by the Board appropriate.

19 Number one fact, Judge Laurenson, neither facility
20 relied upon by LILCO's Revised Testimony, neither of the
21 facilities involved here are relied upon by LILCO in their
22 Revised Testimony. That is neither BOCES II nor Farmingdale.
23 That Revised Testimony, as we understand it, would form
24 the basis for LILCO's next version of their plan.

25 The second fact, Judge Laurenson, is that neither

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1 BOCES II nor Farmingdale lie within the jurisdiction of
2 Nassau County, or the Nassau County Red Cross. Thus, those
3 facilities are both unavailable to LILCO because LILCO, as
4 they say in their Revised Testimony, will be relying on the
5 Nassau County Chapter of the American Red Cross to find
6 facilities for them.

7 I want to emphasize the fact that Farmingdale
8 does not lie within Nassau County, which is contrary to
9 Ms. McCleskey's statement. There may be an identification
10 of Framingdale in the list which is attached to the July 25,
11 1984 letter from the Nassau County Chapter of the Red Cross
12 to LILCO, but Mr. Rasbury during his deposition made clear
13 that the Nassau County Chapter has no jurisdiction outside
14 Nassau County. And we have determined through the offices
15 of the State, that Farmingdale lies in Suffolk County, not
16 Nassau County.

17 Third fact, Judge Laurenson, is that if you want
18 to compare the facilities, BOCES II is even of less
19 relevancy to the issues before the Board than Farmingdale,
20 because BOCES II is not even identified in the list which
21 is attached to that July 25 Red Cross letter to LILCO.

22 And I would like to also point out, Judge
23 Laurenson, as a fourth factor, that LILCO in its Motion for
24 Summary Disposition on the legal authority issues in the
25 Statement of Material Facts, Statement 52 says as follows:

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1 "All relocation centers used for the LILCO
2 plan will be in Nassau County."

3 That is a fact which LILCO has stated there is
4 no issue in dispute. Neither of these facilities lie in
5 Nassau County. There can be no good reason for LILCO to
6 want to subject these men to cross-examination other than
7 to somehow prosecute these people or somehow try to make this
8 appear to be a political game of some sort.

9 The Board's own inquiry, as just presented to
10 Ms. McCleskey is, what if the letters that have been offered
11 by the County are stricken, and Ms. McCleskey has declined
12 the offer. I think there is no relevancy for these gentlemen
13 to appear before this Board, and the Motions to Quash should
14 be granted.

15 JUDGE LAURENSEN: Let me just clarify the County's
16 position.

17 Is it still your position to offer these two
18 letters in evidence with your testimony?

19 MR. MILLER: Judge Laurenson, it is. I think
20 our position is as follows:

21 We have submitted testimony with the two
22 letters, and of course there is what the Board has treated
23 as a Motion to Strike those two letters. That is an issue
24 before the Board. It is one issue.

25 Here we have a separate issue; should these

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1 gentlemen appear before the Board, or should the Board
2 quash the subpoenas?

3 Treating the issue now before the Board, I don't
4 want to link the two. But there is a Motion to Strike those
5 letters. You have presented a question to Ms. McCleskey.
6 She has made LILCO's position clear, and I think that
7 reveals something about LILCO's intent in this matter.

8 JUDGE LAURENSEN: Does the Staff have a position?

9 MR. BORDENICK: Judge Laurenson, as I am sure
10 the Board is well aware by this time, the Staff generally
11 does not take a position regarding discovery disputes between
12 the Parties, and I presently don't intend to digress from
13 that position.

14 However, reading this Motion a question was raised
15 in my mind. I don't see anything in the Motion indicating
16 that the two gentlemen who have been subpoenaed -- notwith-
17 standing that I assume they are State employees -- have
18 authorized Governor Cuomo to file this Motion for them.

19 The analogy I am drawing is, if for example an
20 federal employee is subpoenaed and he wants to quash that--
21 get that subpoena quashed, the Attorney General would represent
22 him.

23 If the Board is interested in pursuing it, I
24 would like to know from Mr. Zahnleuter, have these two
25 gentlemen expressly authorized Governor Cuomo to seek to

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1 quash the subpoenas on their behalf, or is there some
2 statutory authority in the State of New York that would
3 authorize the filing of the Motion.

4 JUDGE LAURENSEN: Are you putting in issue the
5 authority of Mr. Zahnleuter to file this Motion?

6 MR. BORDENICK: I am raising the question. If
7 the Board cares to pursue it, that's fine. If the Board
8 doesn't think it is necessary to reach their decision, that
9 is fine also. It was just a question that came to my mind.
10 I am still not taking a position with respect to the motion.

11 I do have a question. Maybe it is more academic
12 than the question of the Board deciding it, but I thought
13 I would throw the question out.

14 Perhaps the short way to get rid of it is if
15 Mr. Zahnleuter is willing to represent that these gentlemen
16 have expressly authorized Governor Cuomo to file this on
17 their behalf, that would probably be the end of it.

18 Specifically, Judge Laurenson, as indicated in
19 the Motion, it says; "Pursuant to 10 CFR 2.720(f), a person
20 to whom a subpoena is directed, may move to quash."

21 The subpoena was not directed to Governor Cuomo.

22 JUDGE LAURENSEN: I think you are correct that
23 there seems to be a technical disparity here between the
24 Motion and what is required by the rules in that the State
25 of New York is moving to quash the subpoenas, rather than

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1 the two people to whom the subpoenas were issued. But I
2 don't know whether this is a matter that would be significant
3 unless the Staff has some information that Mr. Hines and
4 Dr. Cipriani don't agree with these requests to quash these
5 subpoenas.

6 MR. BORDENICK: I have absolutely no information
7 one way or the other, Judge Laurenson. I simply raise the
8 question. I am leaving it in effect to the Board's
9 discretion as to whether or not they want to pursue it. I
10 am not raising it per se as an issue, and I am certainly not
11 taking a position on the Motion itself. It is a technical
12 question.

13 MS. MC CLESKEY: I would like to respond to one
14 thing that Mr. Miller said, and that was his representations
15 that Farmingdale is in Suffolk rather than Nassau.

16 I think we need witnesses to come in and
17 represent those facts. And I can tell you, since he is
18 making representatiions that my witnesses will say that it
19 is in Nassau County. That just, as far as I am concerned,
20 is another reason why we need to bring everybody in here and
21 talk to them.

22 MR. MILLER: There is no dispute about BOCES II,
23 I assume, Ms. McCleskey? Do you agree that is in Suffolk
24 County?

25 MS. MC CLESKEY: I agree BOCES II is in Suffolk

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1 County. But for the other reasons that I stated, Mr. Hines'
2 testimony is relevant to this proceeding.

3 JUDGE LAURENSEN: I will give Mr. Zahnleuter an
4 opportunity to respond if he wishes to do so. But I would
5 think that unless there is some indication that Dr. Cipriani
6 and Mr. Hines have not authorized Mr. Zahnleuter to file this
7 Motion, we should go forward under the assumption that this
8 technical defect, if it is one, could be remedied by just
9 saying that instead of the State of New York moving, that
10 Dr. Cipriani and Mr. Hines have moved to quash.

11 Do you wish to add anything to this state of the
12 record, Mr. Zahnleuter?

13 MR. ZAHNLEUTER: Not with respect to the technical
14 question that was raised.

15 I would like to mention though, that the issue in
16 this Motion to Quash is not whether the testimony is relevant
17 to the proceeding. The issue is whether it is relevant to
18 an issue in the proceeding.

19 I think the fact that these two facilities are
20 relied upon in the past by LILCO is something that is no
21 different than the fact that LILCO may have approached 25
22 other private facilities on Long Island. And those facilities
23 would be just as relevant as any of these State or County
24 facilities that are in question.

25 MR. MILLER: Judge Laurenson, could I just come

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1 back for a moment to your question to me regarding the
2 letters, the County position about withdrawing the letters.

3 I think the County position -- maybe I can state
4 it better than I did before.

5 The County position would be that there is a
6 Motion to Quash pending here. And if the Board would grant
7 this Motion to Quash, the Board would be determining, I
8 assume, that they do not think it is relevant to this
9 proceeding to hear testimony from witnesses who are the
10 head of facilities not relied upon by LILCO.

11 And then the Board may well also find that the
12 letters which have been attached to testimonies of
13 Drs. Harris and Mayer would also not be relevant. And then
14 I assume the Board would strike those letters.

15 I don't see any consistency between the letters
16 and the Motions to Quash and I think they should be treated
17 separately. And I guess the ball is in your court.

18 JUDGE LAURENSEN: I just want to make sure we
19 have heard everybody's position on this.

20 MR. ZAHNLEUTER: I would like to add something
21 else. I have a AAA map, which shows that SUNY Farmingdale
22 is in Suffolk County. If the Board would like to take that
23 and take Official Notice of it, I could make that
24 available.

25 MS. MC CLESKEY: That's great. I have an agreement

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1 attached to testimony that hasn't been entered into the
2 record yet, because you all are opposing its admission,
3 saying that there is an agreement between the Red Cross
4 in Nassau and SUNY Farmingdale, which has been signed by
5 both Parties, and the testimony says that Nassau works in
6 Nassau.

7 So, I think it is a matter of fact.

8 JUDGE LAURENSEN: The Board will consider the
9 Motion to Quash, as well as the Motion to Admit LILCO's
10 Revised Testimony, and we will be back with a decision.

end T13

11 (Recess.)
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1 JUDGE LAURENSEN: We are back in session now.
2 The Board has considered the motions that were argued before
3 us. Dr. Kline will announce the Board's decision on the
4 LILCO motion to admit revised testimony, and then I will
5 announce the Board's decision on the motion to quash.

6 Dr. Kline?

7 JUDGE KLINE: We consider at this time LILCO's
8 motion to admit revised testimony on Phase II Emergency
9 Planning Contention 24.0, 74, and 75, which deals with
10 relocation centers.

11 LILCO argues in support of its motion that
12 it is timely, relevant to an issue of decisional importance,
13 and not cumulative.

14 LILCO asserts that the proffered testimony is
15 relevant, because it addresses location, capacity, and
16 suitability of its current choice of relocation centers and
17 that its current approach supersedes information filed in
18 previous testimony.

19 Additionally, LILCO has deleted material which
20 the County previously moved to strike, and has added a
21 witness from the red cross which will materially aid in the
22 development of the record on the issues of relocation
23 centers.

24 The County argues in opposition -- the County
25 and State argue in opposition to admission of this testimony

1 that LILCO's testimony is nothing more than a proposal by
2 LILCO to do something in the future, and that the tesimony
3 does not identify what the future action to be taken by
4 LILCO will be. Thus, in the County and State view, the
5 LILCO testimony is vague and speculative, and would serve
6 no purpose, since no meaningful facts can be called from
7 such testimony, and no findings of compliance with regulations
8 can be made.

9 The Board finds that LILCO's proposed testimony
10 is timely filed, relevant to a matter of decisional importance,
11 and not cumulative.

12 Specifically, we find that this testimony is
13 relevant to the Board's decision on adequacy of relocation
14 centers, since it is clear to all parties that it supersedes
15 previously filed testimony on this subject which addressed
16 the location capacity and suitability of other relocation
17 centers which are no longer to be used.

18 We agree with the County and State that the
19 testimony does not specify with precision the locations which
20 are to be used.

21 This, however, is a matter of the weight to be
22 given to the testimony and does not raise the question of
23 admissibility. In light of the necessity for the Board to
24 make prospective findings on emergency planning matters, we
25 have consistently admitted testimony of a prospective nature.

1 That is, that which contained assurance that some
2 action would be taken in the future.

3 Our finding is no different here. LILCO's motion
4 to withdraw previous testimony on Contention 24.O, 74, and
5 75, and to replace that testimony with revised testimony,
6 is granted.

7 JUDGE LAURENSEN: Thank you, Dr. Kline. Turning
8 to the Motion of Governor Cuomo, representing the State of
9 New York and on behalf of Frank A. Cipriani and James Hines
10 to quash, we find that the facts leading up to the instant
11 dispute began on May 31st, when the Board admitted in evidence
12 the direct testimony of Suffolk County witnesses Dr. David
13 Harris and Dr. Martin Mayer, regarding the Contentions 24.G,
14 24. K, 24.P, 73, and 75.

15 Thereafter, LILCO indicated that it intended
16 to drop Suffolk County Community College, and SUNY,
17 Stonybrook, and to substitute Dawling College.

18 Cross examination of Drs. Harris and Mayer on
19 the relocation center testimony was deferred. On June 8th,
20 we gave the County until June 26th to revise its testimony
21 in response to LILCO's revised testimony. On June 28th,
22 the County did file revised testimony of Drs. Harris and
23 Mayer, and attached to that testimony letters dated June 21st
24 from James Hines, the District Superintendent of BOCES II,
25 and Frank A. Cipriani, President of SUNY, Farmingdale.

1 The letters are virtually identical, and state
2 that the two facilities, quote: Will not be available to
3 the American Red Cross or LILCO for use in implementing the
4 LILCO Plan, unquote.

5 On July 27th, LILCO filed an application for
6 the issuance of subpoenas to Mr. Hines and Dr. Cipriani.
7 Pursuant to the NRC regulation at 10 CFR, Section 2.720,
8 we issued the subpoenas.

9 On August 8th, Governor Coumo, representing
10 New York, and on behalf of Dr. Cipriani and Mr. Hines,
11 filed the instant motion to quash. We have considered
12 the motion and the oral argument presented earlier this
13 afternoon.

14 Section 2.720 (f), provides that a subpoena
15 may be quashed, quote: If it is unreasonable, or requires
16 evidence not relevant to any matter in issue, unquote.

17 New York argues that since LILCO no longer
18 relies on SUNY, Farmingdale, or BOCES II as relocation
19 centers, and in fact, concedes their unavailability, any
20 testimony from these two officials would be irrelevant.

21 LILCO argues that the letters are still attached
22 to Suffolk County's revised testimony, and will be offered
23 in evidence. It also asserts that SUNY, Farmingdale is
24 still relied on by the red cross.

25 Suffolk County supports the State's motion to

1 quash, and the NRC's staff takes no position on the merits.

2 We deny the motion to quash, because we find that
3 the testimony earlier today by the FEMA witnesses establishes
4 that any determination of the suitability of a distant
5 relocation center will be based upon a determination of the
6 availability of potential relocation centers closer to the
7 edge of the ten mile EPZ.

8 Thus, in order to judge the acceptability of
9 LILCO's relocation centers in Nassau County, LILCO has the
10 right to establish that SUNY, Farmingdale and BOCES II are,
11 indeed, unavailable, and why they are unavailable.

12 Moreover, the Board is interested in hearing
13 from these witnesses why their facilities are available to the
14 red cross for non-radiological emergencies, but not for
15 victims of a radiological emergency.

16 We believe that there should be a full ventilation
17 of the relocation center issues. The testimony of Mr. Hines
18 and Dr. Cipriani is relevant to that issue. The motion to
19 quash is denied.

20 That completes our rulings on the motions that
21 we have pending before us at this time.

22 We turn now to the other items on our agenda.
23 The first one being the joint motion of New York State and
24 Suffolk County to compel discovery concerning the strike
25 issues.

1 These are matters that were taken up at the
2 conference of counsel last week in Bethesda, and the way
3 it was left that the parties would attempt to resolve their
4 disputes, and would report back to us this week concerning
5 whether all these discovery matters had been resolved, or
6 whether further action of the Board was required.

7 Is there such a report?

8 MS. McCLESKEY: Yes, sir. Would you like to
9 go forward, Mr. McMurray?

10 MR. McMURRAY: Sure. We received some
11 discovery materials from LILCO on Tuesday, and have sent that
12 material to one of our experts, who is looking it over now
13 to determine whether or not it is responsive to our request,
14 and whether or not we need to pursue this matter any further.

15 In light of the fact that he just got the
16 material, and has not yet had a chance to report back to us,
17 I don't think that the County wants to pursue this matter
18 now, and if we have any problem with it -- with the discovery
19 that we have gotten from LILCO, we can come back to the
20 Board, but at this time we don't think that there is any
21 problem.

22 MS. McCLESKEY: Let me supplement that by saying
23 that it is my understanding that the material that was
24 provided states that it is all the material that exists
25 as far as the issues that Mr. McMurray was asking about, and

1 that that material was provided earlier this week -- I believe
2 it was Tuesday -- to the County.

3 JUDGE LAURENSEN: As far as the Board is concerned,
4 then, we will just remove this item, not consider it further,
5 unless the parties, or one of the parties, indicate to us that
6 there is some problem that would require Board intervention.

7 MR. McMURRAY: That is fine.

8 JUDGE LAURENSEN: All right. The next item that
9 I have is the County's motion for reconsideration of the
10 Board's July 24th order regarding the schedule for hearing
11 and prohibiting written testimony on the strike issues.

12 I think that we had discussed last week at the
13 conference of counsel that this would be a matter that we
14 would take up this week orally at the hearing, and I think
15 we further suggested that the chances of prevailing on any
16 of these requests for reconsideration would be greatly enhanced
17 if there was agreement of the parties.

18 So, we will open the floor for a report, or
19 discussion of how you want us to proceed with this motion.

20 MS. McCLESKEY: Well, as to the strike issues,
21 LILCO filed written response on August 6th, and I guess I
22 would just supplement that by saying that the issues have been
23 narrowed since then, and that the number of witnesses that
24 the County is proposing to put on the stand has also narrowed
25 to, I believe, one.

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1 And we feel, as we stated in the August 6th
2 motion, that the Board's schedule is reasonable and that we
3 should go forward on August 28th.

4 JUDGE LAURENSEN: I am sorry, Ms. McCleskey,
5 but we do not have the LILCO written response of August 6th.

6 MS. McCLESKEY: Well --

7 JUDGE LAURENSEN: Do you have an extra copy?

8 MR. McMURRAY: I think it is the one which
9 asks the Board to prohibit, or deny dilatory pleadings
10 and things -- it had a long title to it.

11 MS. McCLESKEY: I have a copy here if you would
12 like to look at it and see if it rings a bell.

13 JUDGE LAURENSEN: The word, 'dilatory,' does
14 seem to ring a bell somewhere.

15 (Ms. McCleskey hands document to Judge Laurenson)

16 JUDGE LAURENSEN: Thank you.

17 MS. McCLESKEY: If it would be helpful to the
18 Board, I will be glad to expand my remarks to summarize the
19 pleading.

20 JUDGE LAURENSEN: No, I think this is one of the
21 matters that we had indicated previously was not necessary
22 for a decision this afternoon, but I don't think that we need
23 to spend any further time on this matter, because we do have
24 this, or at least I remember seeing it cross my desk on
25 Monday, but I think I must have forgotten to bring it with

1 us.

2 Is there anything -- do any of the other parties
3 have anything to add concerning this motion with regard to the
4 schedule that we had established for taking the testimony
5 on the strike issues, beginning on August 28th.

6 MS. McCLESKEY: I do have one more thing, and
7 that is that it has never been represented by the County
8 as to why their witnesses are unavailable on August 28th,
9 and we still don't know that.

10 All we know is that there has been a represen-
11 tation that the witnesses can't come on August 28th, and I
12 guess now all we are talking about is Mr. Minor.

13 MR. McMURRAY: I don't know whether the Board
14 wants to hear from the other parties before it hears from
15 the County, or what.

16 JUDGE LAURENSEN: Does the Staff have a position.
17 I think New York had filed a support for the County, as I
18 recall.

19 MR. ZAHNLEUTER: Yes. It is dated August 8th.

20 JUDGE LAURENSEN: Right.

21 MR. BORDENICK: I don't have anything to add over
22 what I said last week. The only recollection I have is that
23 the Board -- unfortunately, I don't have the transcript of
24 last weeks conference of counsel with me, but my recollection
25 is the Board more or less had ruled, subject to further

1 developments as a result, for example, of depositions, and
2 I haven't heard anything this afternoon that would be in the
3 nature of a new development that would cause the Board to
4 deviate from what it ruled last week.

5 MR. McMURRAY: Judge Laurenson, let me make a
6 couple of points.

7 First, because the issues have been narrowed
8 somewhat, the County's suggested schedule is as follows:
9 We would still like to have the opportunity to submit
10 written testimony. We feel that would help to focus these
11 issues.

12 These are technical issues, and getting them
13 down on paper I think will help focus everybody's questioning
14 and attention to those particular technical issues.

15 And we would like to have the opportunity to
16 file on the 4th of September, and for this hearing to go
17 forward on the 11th of September.

18 As for Mr. Minor's availability, on the week
19 of the 28th he has been able to rearrange his schedule at
20 some pain to himself, and can be made available during the
21 week of the 28th. However, we do feel that we need to
22 prepare for this hearing, and our inability to prepare
23 for this hearing while these other issues are being heard
24 this week and next week, requires that the County be given
25 time to prepare its case, and that is why we are asking to

1 go forward and hear this on the 11th.

2 Also, as far as the matter of depositions go
3 that Mr. Bordenick alluded to, those depositions are now
4 scheduled to take place at the end of next week. I am
5 talking about depositions that are tentatively scheduled
6 for Mr. Minor, Mr. Scilichi (sic), and probably the two
7 other technical witnesses that LILCO has put forward.

8 MS. McCLESKEY: I would like to just add that
9 LILCO as a proposal has no problem with filing written
10 testimony, and we certainly have done it before, and the
11 County would prefer that all the parties file written
12 testimony and simply cross examine on the 28th.

13 We have no objection to filing at the end
14 of next week the written testimony, and I would suggest
15 on Friday, which would give the parties time to look each
16 other's testimony over the weekend over, but I must point
17 out that the Board's order setting the schedule was issued
18 on July 24th, and there were some weeks of recess between
19 then and the August 28th date, and LILCO, as it has
20 previously stated, feels that we need to go forward and
21 close the record, and get on with findings.

22 And the County's proposal for September 4th and
23 September 11th is going to interfere with that.

24 MR. McMURRAY: Judge Laurenson, if this hearing
25 does go forward on August 28th, we cannot file written

1 testimony.

2 JUDGE LAURENSEN: I am sorry. I didn't hear
3 you.

4 MR. McMURRAY: I am sorry. If this schedule,
5 if this hearing does go forward during the week of August 28th,
6 we cannot submit written testimony, because there is not
7 enough time to prepare it.

8 JUDGE LAURENSEN: I recall last week that the
9 Staff said it would be filing testimony on this, is that
10 correct?

11 MR. BORDENICK: That is correct, Judge Laurenson.
12 Certainly we can have verbal testimony available for the 28th.
13 As far as written testimony is concerned, I would have to
14 double check with Mr. Hassell, who was with me on Tuesday,
15 who is going to handle that issue, and I know for a fact he
16 was meeting with the Staff yesterday, and I think we could
17 probably have written testimony available at the end of next
18 week, if necessary. But I will have to double check that
19 with him.

20 JUDGE LAURENSEN: The reason we originally
21 scheduled the oral testimony as opposed to pre-filed written
22 testimony was just exactly what you are talking about here,
23 the problem of time.

24 And if all the parties were in agreement that
25 they wanted written testimony, we of course would be happy

1 to go along with it, but we certainly can't order only some
2 of the parties to submit written testimony, and the others
3 go with oral testimony.

4 So, I think the Board's view at this time is
5 that we will still adhere to our schedule, unless it became
6 apparent to us that it either would not be possible to
7 complete the testimony along the lines that we had
8 envisioned, or in the event that we do hear the evidence,
9 that one or more of the parties can make a case that additional
10 time would be necessary.

11 I think that is jumping ahead to conclusions
12 that may not be warranted. So, I think at the present time,
13 assuming again that Mr. Minor is going to be available during
14 that week, that our intention is that we would still adhere
15 to that schedule, and go with the oral testimony unless there
16 is an agreement to file written testimony by all parties.

17 End 14.
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2 But, this can change from week to week, and we
3 may have to revisit this issue again next week. But we
4 would advise all parties to plan on going forward on
5 August 28th, that that is our present schedule and that is
6 our intention.

7 Let's return to Contention 51. Is there a
8 stipulation on Contention 51?

9 MS. MC CLESKEY: Judge Laurenson, we sent --
10 Mr. Christman, I think, has already represented all of this
11 on the record a month ago or so, but we sent about five
12 months ago a stipulation regarding Contention 51.

13 The state of the record presently is that we
14 filed testimony, and the day we filed the County filed a
15 cover letter with its testimony stating that it was not
16 filing testimony, and that the contention would be with-
17 drawn. And I believe that the stipulation which was sent
18 to Ms. Letsche basically stated that the County was with-
19 drawing the contention.

20 And our suggestion was that the County simply
21 file that in the proceeding. And nothing has happened with
22 it since then.

23 MR. MC MURRAY: Judge Laurenson, Ms. Letsche has
24 already stated on the record that the County has withdrawn
25 Contention 51.

JUDGE LAURENSEN: So, as a matter of record, there

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2 is no objection to an Order to withdraw Contention 51; is
that correct?

3 MR. MC MURRAY: I believe we have voluntarily
4 done so.

5 JUDGE LAURENSEN: The State and the Staff have
6 no objection to that?

7 MR. ZAHNLEUTER: The State has no objection.

8 MR. BORDENICK: No objection.

9 JUDGE LAURENSEN: All right. This will become
10 an official stipulation in the case, and that will terminate
11 our discussion of Contention 51.

12 The next item is the County's motion to re-
13 consider our Order concerning the schedule and page limita-
14 tion on the proposed findings of fact and conclusions of
15 law.

16 Again, this was a matter that was especially set
17 for this week at our conference with counsel last week.
18 Is there a report, or do you want to submit argument on
19 this?

20 MS. MC CLESKEY: Well, as far as a report, the
21 parties have been unable to agree on any additional time or
22 page limitations outside the Board's Order.

23 LILCO opposes the County's motion. The schedule
24 was announced again July 27th. There has been -- I think
25 it is not entirely accurate to say that they are simply

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2 being given 49 days. There has been a lot more time than
3 that. The Board stated at the very beginning of the pro-
4 ceeding that the parties were to work on findings as we
5 went along. And, in addition, the Board, for the first
6 couple of issues, which were big issues that took a fair
7 amount of time to litigate, had the parties file proposed
8 findings in advance. And I think that was indicative of
9 what was going to be happening when we got to the end of
10 the road. And we are now here.

11 And LILCO is prepared to go forward and file on
12 the Board's schedule and within the page limitations that
13 the Board has listed. I believe the County notes that in
14 the beginning the parties suggested that perhaps page
15 limitations wouldn't be necessary.

16 There are a lot of different approaches to any
17 particular problem, and the page limitations that the Board
18 has set are not unreasonable. It's going to require the
19 parties to sift the important issues; and, we think that is
20 an appropriate function. And, therefore, we think we should
21 go forward with the schedule as stated and with the page
22 limitations.

23 I would only like to add that the statements in
24 the County's -- and I guess it may be the State's, too --
25 motion regarding the uniqueness of this proceeding should
have no bearing on the page and time limitations for filing

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2 findings. There are certain unique -- one unique aspect
3 to the case, but in terms of litigating the individual
4 issues they are all according to NUREG 0654 and the NRC
5 regulations, and the record has been developed and we
6 can go forward and write findings. And the uniqueness, if
7 there is a unique situation, shouldn't affect that.

8 MR. MC MURRAY: Judge Laurensen, I would like
9 to address the issue of the parties' attempt to negotiate
10 some sort of agreement. We did meet on Tuesday after the
11 hearings.

12 And LILCO took the position that it could file
13 within the scope of the Board's Order, it could write
14 findings within the page limitation established by the
15 Board. And that because of that, it saw no advantage to
16 agreeing to an enlargement of the time set by the Board.

17 The position taken by LILCO was that it was not
18 willing to consider an enlargement of the time absent some
19 sort of inducement offered by the County such as settling
20 contentions. And the County --

21 MS. MC CLESKEY: I fail to see where this
22 discussion is relevant.

23 MR. MC MURRAY: It's relevant because of the
24 Board's statement on -- that the conference of counsel at
25 the bottom of Page 14,028, saying that: If the parties can
agree among themselves on adjustments to our announced

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1 schedule or to a page limitation different than the one
2 we set, we would be more inclined to modify our Order than
3 if the parties merely stand on their prior position.

4 The --

5 MS. MC CLESKEY: Mr. McMurray, I have stated
6 on the record --

7 MR. MC MURRAY: Excuse me, Ms. McCleskey, I'm
8 not finished with my argument.

9 The position that LILCO took was that it was not
10 to LILCO's advantage to have an enlargement of the time and,
11 therefore, absent some sort of inducement with the County
12 surrendering certain of its rights it would not attempt to
13 negotiate an enlargement of the time.

14 We feel, Judge Laurenson, that the 120 days asked
15 for by the County is reasonable. There is also one other
16 statement made by the Board in an issue brought up by
17 the Board that I would like to address, that we could not
18 address in our pleading because it was not raised until the
19 conference of counsel. That is the Board's statement also
20 on Page 14,028 saying: If any party expects to wait until
21 the hearing is complete or has even waited until today to
22 begin preparing its proposed findings of fact, that party
23 has an almost insurmountable obstacle ahead.

24 I absolutely agree with that. But I disagree with
25 Ms. McCleskey's statement that the Board told the parties

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1 at the beginning of this hearing that they should be
2 working on findings as we go along.

3 As a matter of fact, this Board has taken some-
4 what the opposite approach. On April 13th, LILCO filed a
5 motion for findings of fact to be written and submitted by
6 the parties on Group I issues. The Board addressed that
7 issue on April 24th in Transcript Page 6653 and said as
8 follows: I want to hold the request for a partial initial
9 decision for discussion at a different time, not today.
10 But I will share with you some of the observations of the
11 Board. And that is that as long as we are going at the
12 current pace that we are with hearings, approximately three
13 out of every four weeks -- I think that was either a mis-
14 statement or a typo, because at that time we were going
15 three out of every five weeks -- our observation is that it
16 is going to be almost impossible to take the time to prepare
17 the findings of fact, whether it's done by the attorneys or
18 the Board to make it worth our while to pursue this. On
19 the other hand, should a lull develop in the schedule for
20 some reason, we might take another look at it.

21 Judge Laurenson, not only has there not been a
22 lull in the proceedings but in fact the whole pace has gone
23 faster.

24 The hearing days were enlarged so that the hearing
25 week was longer by about five hours, and even the counsel --

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2 the resources available to the County back in April when
3 the Board made the statement have diminished, because there
4 are now more proceedings going on before the NRC regarding
5 the Shoreham case. And some of our resources have been
6 drawn away to cover those other proceedings.

7 Not only that, I recognize we have had, for the
8 last two sessions, three week breaks. However, during one
9 of those three week breaks, of course, the Board established
10 an entirely new issue that had to be addressed, and the
11 County has been as diligently as possible trying to prepare
12 its case on that matter as well as doing all the other
13 things that are normally done between breaks. As far as
14 the other three week break that we had during early July,
15 of course, that was over the 4th of July week-end and there
16 was also the matter of the FEMA documents and FEMA deposi-
17 tions that took a lot of the parties' time.

18 I would like also to address Ms. McCleskey's
19 statement about the uniqueness of the case. We are not
20 talking about the uniqueness of the issues, although there
21 are some very unique issues here regarding the ability of
22 the utility to carry out an offsite plan and act somewhat
23 like a government. What we are talking about mostly is
24 the uniqueness of the size of this case which I don't think --
25 and I think most people will back me up here -- that the
regulations ever contemplated a record quite of this size.

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2 Nevertheless, even though the regulations do
3 establish a 40 day period for findings they also establish
4 authority on the part of the Board to enlarge that time.

5 Thank you.

6 JUDGE LAURENSEN: Does anybody else wish to be
7 heard on this motion for reconsideration?

8 (No reply.)

9 All right. We will consider the statements of
10 the parties.

11 We had indicated today that we would look for
12 a report concerning the -- our direction to the parties to
13 confer about the preparation of a uniform table of contents,
14 list of exhibits, witnesses, and sequence that we had
15 identified in that order concerning the proposed findings
16 of fact. I think one of the things that we would be
17 interested in is an agreed upon filing date for these
18 documents so that all parties would know well in advance of
19 the time their proposed findings are due what the uniform
20 table of contents is going to be and so forth.

21 Is there a report on this?

22 MS. MC CLESKEY: Yes, sir. Judge Laurenson,
23 the County had sent us a proposed table of contents. We
24 sent one back to them. The agreement is that they are
25 going to finalize any changes that they would like to make
to it this week-end, and our expectation is that by Monday

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1 we will have an agreed upon table of contents. We don't
2 anticipate any difficulties with that.

3 I am not aware of any discussions or drafts of
4 the other lists you mentioned. But perhaps Mr. McMurray
5 knows of some.

6 JUDGE LAURENSEN: I'm not necessarily asking
7 for drafts. I'm really looking for the -- establishing
8 procedures to bring these about and also a filing date
9 for them.

10 MR. MC MURRAY: Judge Laurenson, I think the
11 lines of communication are open. We are talking about this.
12 And I think that if you want to set a date for finalizing
13 these, that's fine. Maybe we can -- Ms. McCleskey and I --
14 talk and we can try to come up with a date that would be
15 agreeable to everybody.

16 It seems to me th t there is really no -- it
17 is nothing that has to be done and given to the Board by
18 the beginning of next week. And if we could set a date for
19 finalizing this, say, for Labor Day, I think that would
20 probably be okay with everybody here.

21 JUDGE LAURENSEN: Okay. I think we just wanted
22 to be certain that this is something that we take up in
23 the next two weeks, because that is all we have of a
24 scheduled hearing at this time.

25 All right. The last thing that I have on my

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2 list for today is next week's schedule. According to the
3 July 31st letter, we will begin with the LILCO panel on
4 relocation centers next Tuesday. I'm not going to read
5 into the record everything from Page 2 of that letter, but
6 let me just inquire whether there is any matter on that
7 schedule for next week that is unresolved at this time?

8 I noted, just for the record, that there was
9 a question of whether the NRC Staff witnesses were going
10 to appear as a panel or individually. Has that matter been
11 resolved?

12 MR. MC MURRAY: It hasn't been resolved but we
13 are talking about it, and I don't think there is going to
14 be any problem.

15 MR. BORDENICK: Mr. McMurray and I hopefully will
16 talk tomorrow. I don't think it's a major problem in any
17 event. I think it's going to be resolved before the
18 witnesses get here.

19 JUDGE LAURENSEN: What about the question of
20 the availability of -- strike that.

21 What about the question of the County's ability
22 to question the LILCO panel on recovery and reentry prior
23 to Thursday if the schedule would permit that? Has that
24 been resolved?

25 MR. MC MURRAY: I don't think it has been resolved,
Judge Laurenson, but Mr. Minor now has been able to make

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2 himself available and will be here probably in time on
3 Wednesday if this matter comes up.

4 MS. MC CLESKEY: Well, I wasn't aware of that,
5 and that's good. But we would like to go forward whether
6 he makes it or not. And I think that's still the dispute.

7 Of course, it may never come to pass, because
8 we may not get to it on Wednesday.

9 MR. MC MURRAY: In light of the fact that
10 it doesn't look like it's going to be an issue, I think
11 that there is no need to really go further on this.

12 MS. MC CLESKEY: Well, the problem is there is
13 a disagreement about whether what we have got scheduled
14 on Wednesday is going to take up the day or not. And I'm
15 not at all sanguine that it is. And, you know, four of
16 the panels are panels that LILCO will be cross-examining
17 on, and I just don't think it may take up the entire day.

18 And I would like to go forward with 85 and 88 if
19 we have time to do that on Wednesday.

20 JUDGE LAURENSEN: I think under our prior Orders,
21 all parties will be filing their cross-examination plans
22 and estimates of cross-examination on Tuesday when we start
23 the hearing. So, we should, at that point, have a better
24 estimate of whether this is going to be a problem or not.

25 And if it has not been resolved by next Tuesday,
then the Board will make a determination of whether we go

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forward with the LILCO panel prior to Thursday.

2 Are there any other scheduling disputes that
3 would affect the hearing next week?

4 MS. MC CLESKEY: Well, the other matter which
5 is Item 2 on Page 3 is whether Messrs. Hines and Cipriani
6 should be heard as a panel together or separately.

7 And it's LILCO's intention to hear them
8 separately, beginning with Mr. Cipriani, and to ask that
9 Mr. Hines be excluded during the cross-examination of
10 Mr. Cipriani. And we think that that procedure is justified
11 considering the similar nature of the two letters, the fact
12 that we have not had any discovery on these witnesses.

13 And, in addition, since we subpoenaed them I
14 think we are entitled to hear them as we choose.

15 JUDGE LAURENSEN: What is the State's position?

16 MR. ZAHNLEUTER: Well, as stated in the letter
17 of July 31st, we oppose that notion. And I'm shocked that
18 the veracity of Mr. Hines and Dr. Cipriani are being placed
19 in issue in this proceeding. I don't see any reason at all
20 why those men have to be separated and excluded.

21 They can be put together on a panel just like
22 everyone else in this proceeding has.

23 JUDGE LAURENSEN: In this case, they are not
24 filing any direct testimony. It's not that type of situation.
25 They are here only for one reason, and that is that LILCO

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2 has subpoenaed them for cross-examination. So, I don't
3 think that the usual rule of the panel necessarily has any
4 application to this testimony.

5 MR. ZAHNLEUTER: It's true that they haven't
6 filed testimony, but on the other hand they have submitted
7 letters. And those letters, as you have observed, are
8 similar.

9 And LILCO has subpoenaed the witnesses based
10 on those letters, not just a blank subpoena.

11 MS. MC CLESKEY: I would just like to note that --
12 I'm sorry, Mr. Zahnleuter, were you finished?

13 MR. ZAHNLEUTER: For now.

14 MS. MC CLESKEY: Okay. It looked like you might
15 have been leaning forward to say some more.

16 I would just like to note that these gentlemen
17 did not submit the letters, that they were submitted with
18 the County testimony. And we spent several weeks wrangling
19 over whether they should come or not.

20 And if the State or the County felt that there
21 was a procedure by which these gentlemen should have been
22 brought before the proceeding, they could have voluntarily
23 produced them. And at this point, LILCO is entitled to
24 hear them separately and to exclude Mr. Hines.

25 JUDGE LAURENSEN: That request will be granted.
That's the usual order of proceeding at any trial or any

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2 hearing where this challenge is brought. We will follow
3 that rule here.

4 LILCO may call the witnesses individually and
5 the witness who has not testified may be excluded from
6 the courtroom or sequestered.

7 Anything further for next week's schedule?

8 MR. MILLER: Judge Laurenson, a real minor
9 technical point I think. The County's motion for the
10 admission of testimony on Contentions 85 and 88, that
11 motion was filed August the 1st, it is my understanding
12 that LILCO does not intend to oppose the admission of the
13 County's testimony.

14 I talked to Mr. Irwin about this. He made
15 clear LILCO is reserving their rights to file particular
16 motions to strike portions of the testimony. But they
17 are not opposing admission of the testimony, and perhaps
18 the Board can just rule that the testimony is going to be
19 admitted.

20 end #15
21 MM flws

22
23
24
25

T16
MM/mml

1 JUDGE LAURENSEN: I thought we did that last week,
2 didn't we?

3 MR. MILLER: Okay.

4 JUDGE LAURENSEN: At the Conference of Counsel
5 I thought he indicated he had no objection, but reserved
6 the right to file Motions to Strike.

7 MS. MC CLESKEY: In case there is any question,
8 we do not have any objection. There is no problem.

9 JUDGE LAURENSEN: I will make the record clear
10 that the Motion will be granted. The testimony will be
11 admitted.

12 Anything further for this week?

13 MS. MC CLESKEY: No, sir.

14 MR. MILLER: No.

15 JUDGE LAURENSEN: All right, we will adjourn
16 the hearing until Tuesday morning at approximately 10:00 a.m.

17 (Whereupon, at 4:00 p.m., the hearing in the
18 above-entitled matter was adjourned, to resume at
19 approximately 10:00 a.m. on Tuesday, August 21, 1984.)
20

CERTIFICATE OF PROCEEDINGS

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

In the matter of: Long Island Lighting Company

Date of Proceeding: Thursday, August 16, 1984

Place of Proceeding: Hauppauge, New York

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

Mimi Meltzer

Official Reporter - Typed

Mimi Meltzer

Official Reporter - Signature

Myrtle Traylor

Official Reporter - Typed

Myrtle Traylor

Official Reporter - Signature

Garrett Walsh

Official Reporter - Typed

Garrett J. Walsh, Jr.

Official Reporter - Signature