

ORIGINAL  
UNITED STATES  
NUCLEAR REGULATORY COMMISSION

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IN THE MATTER OF:

DOCKET NO: 50-322-1 (OL)

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station)

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C O N T E N T S

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2 WITNESSES

3 (None)

4 EXHIBITS

5 (None)

6 INSERTS

7 (None)

8 Morning recess: 26957

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

1 WRBeb 1  
2 JUDGE BRENNER: Good morning.

3 Before we get to LILCO's motion to reopen and  
4 supplement the record and the answers thereto, is there  
5 anything further that we can productively hear from LILCO or  
6 the Staff with regard to the County's I guess motion with  
7 respect to the blocks and the fallback position of being a  
8 settlement offer or an offer of some accommodation?

9 MR. ELLIS: Judge Brenner, we are considering  
10 whether we can reach some sort of accommodation, and I  
11 simply have not had time to consult with the appropriate  
12 persons in the company. And I have told Mr. Dynner that I  
13 will do so as quickly as possible and get back to him on an  
14 offer of an accommodation on that issue. But I think that  
15 the time has just not been adequate to have the  
16 consultations that I think are necessary in order for me to  
17 be able to do such a thing.

18 So we would suggest that the motion has been  
19 made, and give us an opportunity to see if we can  
20 accommodate -- reach an accommodation before we ask the  
21 Board to rule on the motion. And I would expect that I will  
22 be able to have discussions with Mr. Dynner next week.

23 And if we are unable to reach an accommodation, we  
24 could certainly file with the Board our response to  
25 Mr. Dynner if that is necessary, and of course I hope it

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1 isn't, our response to the motion as quickly as possible,  
2 and perhaps immediately following the Thanksgiving holiday,  
3 if that would be agreeable to the Board.

4 We will need the first part of next week to  
5 consult and reach accommodations. If the Board wants  
6 something filed provisionally sooner, we will of course do  
7 that.

8 JUDGE BRENNER: I recognize the time frame is  
9 tight. It would be helpful if we could usefully resolve the  
10 matter one way or the other at the conference of parties on  
11 Tuesday.

12 MR. ELLIS: I had not planned to be in Bethesda  
13 on Tuesday, but I will make every effort to finish the  
14 thing. One of my problems is I needed to consult more with  
15 Dr. Rau and Dr. Wachob, and not too long after you excused  
16 them, they flew home, or at least one of them flew home and  
17 the other flew elsewhere.

18 But I will make every effort to see. I will  
19 certainly be in touch with Mr. Dynner on Monday after  
20 touching bases over the weekend with them as much as I can.

21 JUDGE BRENNER: Let's leave it this way. We  
22 would like to be able to productively discuss it on Tuesday  
23 if feasible. If it is not feasible, somebody -- it doesn't  
24 have to be yourself -- can tell us that on Tuesday, and  
25 perhaps give us a very brief status report. And if there

1 WRBeb 1 is not much status to give, -- As I say, it can be somebody  
2 other than you if you prefer to do it that way because of  
3 schedules -- at that time we will set a deadline for a  
4 response or accommodation.

5 MR. ELLIS: Yes, sir.

6 JUDGE BRENNER: And the deadline will probably be  
7 set for some time the following week.

8 MR. ELLIS: Yes, sir.

9 JUDGE BRENNER: And we will take the Thanksgiving  
10 holiday into account in setting the time.

11 Mr. Perlis, I guess we will leave it on the same  
12 schedule for the Staff.

13 MR. PERLIS: That's fine. We were able to catch  
14 Dr. Bush at the airport last night and we have had some  
15 discussions with people in Richland. We have not been able  
16 to talk to anyone with the NRC in Washington, and we would  
17 like to do that before reaching a position.

18 JUDGE BRENNER: All right. Let's have the  
19 parties talk with each other also, all three parties,  
20 between now and Tuesday.

21 Mr. Dynner, did you want to say anything else on  
22 that subject?

23 MR. DYNNER: No, sir. That's fine with us.

24 JUDGE BRENNER: All right.

25 We have before us LILCO's November 6, 1984,

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1 motion to supplement and reopen the record. We have the  
2 County's response, a joint response with the State, dated  
3 November 13, 1984, and the Staff's reply, dated November 14,  
4 1984.

5 We have considered the motions of LILCO and we  
6 are going to grant them, and we'll tell you why. We do need  
7 discussion here of the schedule and the scope, however.

8 In terms of why we are granting the motion, we  
9 find that the motion does in fact meet the traditional  
10 reopening criteria. We have been able to decide as a Board  
11 at this point in the proceeding, and unlike the position we  
12 were in as recently as -- oh, in the time frame of two to  
13 four weeks ago, we know more now than we did then and we can  
14 and we do find that the new evidence might materially affect  
15 the outcome of the proceeding.

16 I believe we stated in prior rulings on the  
17 reopening in this case, but if we have not we will state it  
18 now, that the standard does change somewhat as the Board  
19 gets closer to a decision time, and it is just a function of  
20 the Board's knowledge at that point in time of the posture  
21 of the case.

22 As an example of this continuum, if you will,  
23 when a Board is on the verge of issuing a decision or in  
24 fact has just issued a decision, the standard applied is  
25 whether or not the new evidence would affect the outcome



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1 because at that point we know everything we need to know  
2 about the decision we would reach at that moment, and we can  
3 easily match the new information which a party believes, in  
4 its view, would affect the outcome with our view, given the  
5 decision at that time.

6           When the motion to reopen is filed at a point  
7 somewhat before that, as it is here, -- we have certainly  
8 not begun, in a systematic fashion, to bring the evidence  
9 together in written draft form and Board deliberation and so  
10 on at this point -- the standard is whether or not it might  
11 materially affect the outcome. But I guess I would rephrase  
12 that slightly, that it reasonably might materially affect  
13 the outcome.

14           We know enough to know that it is going to be  
15 close enough on certain points that the evidence fits that  
16 standard, and we have been able to, although  
17 non-systematically, cull all the evidence and bring it  
18 together. Certainly we have been aware of the evidence as  
19 it has come in and we have been able to consider some of  
20 that evidence in a less rigorous but somewhat systematic  
21 fashion. And we find that the motion meets that standard.

22           There is no question that the new information  
23 relates to a significant safety question, the ability of the  
24 emergency diesel generators to perform reliably their  
25 intended function. The timeliness of the motion, of course,

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1 has been the subject of discussion of the Board here in  
2 different but related contexts, and also was the subject of  
3 some space in LILCO's motion and the County's answer.

4 The timeliness can be analyzed in this fashion:

5 We believe that LILCO is late in coming to the  
6 realization that this information is material to the case.  
7 LILCO has pointed to the fact that some of the information  
8 has only recently been developed. That may be true and even  
9 assuming, arguendo, that it is true, it is also correct that  
10 the relative timing of the hearing vis-a-vis the further  
11 work done by LILCO was largely in LILCO's control because we  
12 told LILCO very early on that we would adjust the schedule  
13 of this case to a later schedule to accommodate that  
14 information.

15 A footnote to what I just said:

16 It is true that there is some further information  
17 that could not reasonably have been anticipated by LILCO  
18 that, although perhaps not by itself a reason for LILCO to  
19 wait this long to realize that further information on the  
20 loads and that it might want to undertake the endurance type  
21 testing came late, nevertheless there is some other, further  
22 information. And I have in mind particularly the  
23 information as to the situation with respect to the cam  
24 gallery cracks, and the fact that they had been welded.

25 This was not known at the time the schedule for

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1 this hearing was set. It was not known as late as the time  
2 that testimony was filed by the County and LILCO  
3 originally.

4 We did accommodate that information already in  
5 supplemental testimony, but it is in part that information,  
6 when viewed cumulatively with other information, that we  
7 come to the conclusion that the further new evidence on the  
8 testing of the blocks, particularly the strain gaging in the  
9 cam gallery area and the examination of the blocks after the  
10 endurance run, might reasonably materially affect the  
11 outcome of this proceeding.

12 Even if LILCO is properly charged with waiting  
13 too long to realize that this information should be in the  
14 proceeding, the result in the real world is not one of great  
15 prejudice to the other parties, in our view. We might well  
16 have delayed the beginning of the entire proceeding on the  
17 diesel engines until after this further information had been  
18 developed and completed by LILCO if it had made the  
19 adjustment in the time frame before the beginning of the  
20 hearing that we think it could have made. But we might also  
21 reasonably have gone forward on some parts of the issues,  
22 and then taken up the other issues, depending on how matters  
23 developed.

24 In any event we are now at this point in time,  
25 and the prejudice is to LILCO in terms of any ultimate

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1 delay that proceeding this way will cause.

2 Frankly, I don't know if the end decision date is  
3 affected much by proceeding in this fashion as opposed to  
4 waiting and having everything before us and proceeding  
5 forward. I suspect that it has and will result in some  
6 material delay. I can't put a number on it. I suspect that  
7 it is more than a few weeks, but not as much as many months.  
8 In any event, that prejudice is of LILCO's own making and  
9 LILCO is the one in fact prejudiced by it.

10 The worst prejudice that may be had with respect  
11 to the other parties and in fact the Board's schedule is the  
12 fact that we might have more efficiently conducted the  
13 hearing once we were in the hearing stage. However, that  
14 prejudice is not so substantial that we are going to turn  
15 our backs on information which we think might reasonably  
16 affect the result on a significant safety issue.

17 And we expect to be able to keep that prejudice  
18 to a minimum by doing our best to avoid the need to revisit  
19 evidence we have already heard. And we also expect to keep  
20 prejudice to a minimum in terms of sitting to the other  
21 parties, given the fact that we felt LILCO could have  
22 handled things differently. When we set the schedule, we  
23 are going to hear from the parties and be sensitive, within  
24 reason.

25 And we also disagree with LILCO's view of the

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1 scope of the reopened hearing, and we have had a little bit  
2 of discussion on that. LILCO itself has modified its  
3 written-scope approach somewhat in Mr. Ellis' oral statement  
4 yesterday. And we are going to modify it some more.

5 I think that is probably as far as I have to go.

6 Perhaps I should note for the benefit of Counsel,  
7 who put in some very helpful work researching certain cases  
8 which have been cited to us, that nothing in my remarks  
9 connotes agreement with some cases that have been cited  
10 for the proposition that there is a lower standard for  
11 reopening when it is applied to an applicant. I just didn't  
12 have to reach that point of agreeing.

13 I think the better view is that the standard is  
14 the same and when you apply the standard, the application  
15 might vary once you analyze which party is prejudiced by  
16 certain actions, and the nature of that prejudice.

17 Another way of amplifying that is, for example,  
18 if an intervenor moves to reopen at a point early enough in  
19 the record where it is not clear that it would definitely  
20 materially affect the outcome, a stage similar to the one we  
21 are in now, but there is some reasonable probability that it  
22 would affect the outcome, and an applicant strenuously  
23 opposed reopening at that point, the solution then is to  
24 deny the motion without prejudice to consideration of it at  
25 the time of decision, at which time the Board is in a better

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1 position to know whether indeed it would affect the outcome.  
2 And if the result is that it would affect the outcome, the  
3 party prejudiced at that point is the utility who earlier  
4 resisted the reopening.

5           Applying that to this situation, it is  
6 conceivable that we could delay ruling on the motion until  
7 we get to the point of decision on the information that is  
8 before us. But if we do that it would be the utility that  
9 would be prejudiced if we find that indeed the information  
10 would materially affect the outcome, if believed. Of course  
11 there is always that next step on the merits. And that  
12 would be unfair since in this case it is the utility moving  
13 to reopen the record.

14           So there are differences in the posture of the  
15 parties which result in differences in the application of  
16 the tests, but I don't think difference is in the standards  
17 that are applied.

18           As I said, I didn't have to get to that point but  
19 I wanted it noted since the parties had expressed their  
20 views quite well in the pleadings on that subject as well as  
21 others. And I wanted them to know that their views have  
22 been helpful to us, even though I haven't gone through the  
23 effort of mentioning every point in the pleadings. But we  
24 have considered them.

25           Mr. Dynner, did you want to say something?

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2 MR. DYNNER: Yes, sir. I would just like to  
3 request a clarification.

4 LILCO, on page 15 of its motion, states, and I  
5 quote:

6 "Under traditional analyses to meet  
7 the reopening standard, the applicant must  
8 essentially concede that its proof to date is  
9 insufficient in order to argue that the new  
10 information is likely to affect the result. On  
11 the other hand, the applicant may defer any  
12 attempt to inject the new information until  
13 after the Board rules on the merits."

14 I just wanted a clarification as to whether the  
15 Board's granting this motion in the context of not applying  
16 a special rule or a special test for an applicant as opposed  
17 to an intervenor means that the Board is essentially going  
18 to have this litigation limited to the proposed FJAR  
19 limitation or qualified load of 3300 Kw, or whether, in  
20 contrast, the Board intends to adopt a position that would  
21 not require LILCO to abandon its abandoned qualified loads,  
22 if I can put it that way.

23 I think the Board knows what I mean from the  
24 material that was stated in our response to LILCO.

25 JUDGE BRENNER: Yes, I was going to address that  
in the context of scope and schedule.

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1 We disagree with the County. We are not going to  
2 preclude the possibility that we will make findings at the  
3 higher load level. And I guess we disagree with LILCO that  
4 we had to reach a determination that the proof is in fact  
5 insufficient in order to reopen. And I guess I tried to  
6 state that in terms of my view that the standard does change  
7 on a continuum. It doesn't change with the party, it  
8 changes with the posture of the case.

9 I think what LILCO says would be true if we had  
10 received its motion at the point in time when we were  
11 essentially ready to issue a decision or had issued a  
12 decision and then we could apply the standard that it would  
13 change the result. We are not at that point yet. We are at  
14 the point where we think it reasonable that it would  
15 materially affect the outcome. I guess that's another way  
16 of saying it is a very close question.

17 But we are not going to preclude parties from  
18 seeking findings at the higher load level, and we are not  
19 going to preclude ourselves as a Board from making findings  
20 at that higher load level.

21 Having said that, I will get now to the point I  
22 was going to get to in any event. Once we put all the  
23 issues together in our decision we may decide not to make  
24 findings at the higher load level for any one of several  
25 reasons.



1 WRBeb

1 MR. DYNNER: Just as a perhaps related and  
2 further clarification, is it the Board's view, for example  
3 on crankshafts, that the evidence as to our calculations as  
4 to the crankshaft behavior at 3300 Kw would be potentially  
5 materially affecting the outcome at 3500, or is it the  
6 intention to limit the calculations and information at 3300  
7 to the qualified load of 3300?

8 JUDGE BRENNER: You know you asked me a question  
9 I had not previously considered, and that's my honest  
10 answer. I don't know. So I guess you can take that answer  
11 as saying no, we do not intend to place that type of  
12 limitation on the evidence. But we had not been thinking  
13 that its primary materiality would be that; let me put it  
14 that way.

15 Related to your question, it is our view that we  
16 are not going to set the schedule of the further hearings  
17 along the lines of the dichotomy proposed by the County. We  
18 are not going to have a hearing solely on the loads and wait  
19 for a decision on that before we determine whether to go  
20 forward with the other issues. We are going to schedule  
21 things so it could go back into hearing on all the issues.

22 Now for all we know there will be no issues on  
23 the lower load. And although it wasn't necessary to belabor  
24 the point, the one aspect related to the timeliness -- it  
25 wasn't material to the views on timeliness which I already

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1 gave, but a related aspect is that it is obvious that all  
2 the parties have proceeded with some uncertainty as to how  
3 to proceed, substantively and procedurally, with the fact  
4 that there has been a primary focus on the substantive  
5 diesel issues while, at the same time, there has been  
6 consideration of whether or not the plant can be safely  
7 operated and meet all the emergency criteria with lower  
8 emergency loads set to the diesels.

9           And the reason I say that not just LILCO has  
10 proceeded with uncertainty is the fact that the County, to  
11 our knowledge at least, has not pursued any claims that the  
12 lower loads would be unsafe for reasons that the safety  
13 equipment which would be run by the higher loads are needed  
14 for the transient or accident analyses.

15           Even if we said it was not material to this  
16 diesel proceeding, we could have found hypothetically that  
17 based on the issues before us, which are now the crankshaft  
18 and the cylinder blocks, that the diesels are adequate at  
19 the higher load. Yet neither LILCO, for its own reasons  
20 or because with respect to components not in issue before  
21 us -- The Staff felt that the diesels should be kept to the  
22 lower loads -- then that would have been the case unless the  
23 County pursued remedies through appropriate procedures,  
24 probably a 2.206 type procedure.

25           And while we have pointed out to LILCO that it

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1 has had these loads under consideration for some time, the  
2 County back in July said it was going to closely follow this  
3 also, and yet apparently has not.

4 MR. DYNNER: May I respond to that, Judge?

5 JUDGE BRENNER: Yes. As I said, it wasn't  
6 material but I just wanted to point out some of the  
7 uncertainties.

8 MR. DYNNER: I would like just briefly to  
9 respond.

10 This proceeding and litigation has gone forward  
11 with the load levels that are stated in the EJAR. The  
12 County noted early on, as you have just said, when we  
13 received the July 3 letter from LILCO to the Staff, that  
14 there was a move at that point to perhaps reduce the  
15 qualified load. It wasn't of course until October 22 that  
16 LILCO filed its proposed FSAR revision.

17 The County feels strongly that there has been  
18 distinct prejudice to the County in terms of time, money and  
19 effort in litigation of the effectiveness or reliability of  
20 diesels at a qualified load which now appears to be in the  
21 process at least of being changed. And we have, especially  
22 after your latest remarks to us a couple of weeks ago, made  
23 all attempts to begin an analysis of 3300.

24 We have also felt rather strongly that it was  
25 important that we receive all information from LILCO and

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2 But as I also indicated in our decision, we may  
3 decide for several reasons to make no findings at the higher  
4 load.

5 In terms of your point that you don't know if  
6 it's 3300 or 3400, let me point out that surely we are at  
7 the stage in this proceeding where, when we come back in  
8 litigation, if there is -- the witnesses in testimony will  
9 be able to point out what effects the different loads would  
10 have between 3300 and 3500. We have a lot on the record  
11 about 3500 and once we look at 3300, presumably there will  
12 be some sort of basis for comparison. But if 3400 is going  
13 to make a difference we would expect to see -- we are not  
14 precluding testimony on that.

15 MR. DYNNER: I apparently haven't made myself too  
16 clear. What I am saying is that supposing it is found,  
17 after an analysis of all of the pumps and other electrical  
18 devices which have to be run off of the diesel during a loop  
19 LOCA that in fact you need 3400 kilowatts of power rather  
20 than 3300. That's the -- in my hypothetical, the minimum  
21 required power output during a loop LOCA would be 3400. And  
22 at that point it would seem to us at least that the value of  
23 the additional testing and inspections that had been done at  
24 3300 would be much more limited, at least -- and I say that  
25 as the mildest statement I can make -- than if the qualified  
load, that is to say, the highest power output -- or the

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1 lowest power output required would be 3300. So I'm not  
2 arguing the point about safety margins. I think that is a  
3 point which must be considered regardless of the qualified  
4 load level which is the maximum output. I think that that  
5 issue is inherent in everything regardless of what the  
6 qualified load which is the maximum amount of power output  
7 that's required might be. And that certainly would be, I  
8 believe, taken into consideration in any load level that  
9 would be the qualified load.

10 What I'm talking about is strictly the qualified  
11 load. And if it's found that the power output requirements  
12 for a diesel were in fact 3400 then it would seem to us that  
13 a litigation at 3300 would not be helpful, and that was the  
14 point I was trying to make, sir.

15 JUDGE BRENNER: I don't know whether it would be  
16 helpful or not. It sounds to me that the loads are getting  
17 close enough where we would indeed have helpful information  
18 once we put it together.

19 Do you want to respond to that one though, Mr. Ellis?

20 MR. ELLIS: Judge Brenner, I think it would be  
21 helpful even if it were 34. As I think the Board has  
22 indicated we would then have a substantial amount of  
23 information at 35 and a substantial amount of information at  
24 33.

25 And let me point out that in terms of

1 WRDagb 1 calculations -- and really what we're talking about, I  
2 think, here chiefly is the crankshaft and I know the Board  
3 is going to come to that on what it thinks ought to be the  
4 scope --

5 JUDGE BRENNER: Well we agree -- I'll tell you  
6 now, we agree, as far as the changes in load, we agree with  
7 the description in the County's pleading. There is one  
8 other part in the County's description that we disagree with  
9 related to the Staff's letter on crankshafts, but putting  
10 that aside we agree with the County's description.

11 MR. ELLIS: Well focusing on that for a moment,  
12 however, the County previously calculated on an AB<sub>3</sub> -- there  
13 was no AB<sub>3</sub> calculation on the torsional stresses for the  
14 crankshaft, there was a web size calculation in the  
15 previous litigation which of course doesn't change with the  
16 load. There was a calculation for horsepower under Lloyd's,  
17 but there were no safety factor calculations and no DEMA  
18 calculations, those calculations were done by the Staff and  
19 relied upon by the County.

20 So I do think the information would be relevant  
21 for that whole range of loads, I think the block top and cam  
22 gallery inspections and the results of those inspections I  
23 think would be helpful information both at 33 and at loads  
24 in that general vicinity.

25 If it would help the Board I can give the Board

1 WRBagb

1 a status now -- I assume from the Board's remark earlier  
2 that I don't need to respond to such things as definitions  
3 of qualified load on which we may differ, that sort of  
4 thing.

5 JUDGE BRENNER: That's right. Let me just point  
6 out that when as lawyers -- and if Judge Morris will forgive  
7 me for personalizing it, from my point of view we discuss  
8 these things it may turn out to be so much wasted time  
9 because an engineer sitting here may realize what an unreal  
10 world it is we're discussing. For example, the tolerance on  
11 the 3300 test, as I understand it, is plus or minus 100  
12 anyway. And presumably that will be -- pertinence or lack  
13 of pertinence of that range will be addressed in testimony  
14 also. So you are going to be covered in that range of 33 to  
15 35, I assume, in the testimony.

16 MR. ELLIS: Yes, sir.

17 JUDGE BRENNER: Or an explanation as to why it is  
18 not necessary to do so, but in any event....

19 All right. Let me jump to the scope, if I might,  
20 and then we'll back up. I do need some information on when  
21 things are scheduled for from the Staff and LILCO.

22 But in terms of the scope, we would permit  
23 further re-opening and supplementation of the record, I'll  
24 use both terms to describe the whole of it on evidence  
25 concerning -- and I'm going to be paraphrasing the County's

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1 description on page 15 of its answer: "...evidence  
2 concerning the results of the additional testing  
3 and inspections of the endurance run just  
4 completed of EDG 103 as to the crankshaft and  
5 the block."

6 And also, with respect to crankshafts:  
7 "...evidence concerning any DEMA stress  
8 calculations at the new qualified load."

9 And as I say, that includes whatever  
10 uncertainties people think should be included in the  
11 testimony, we'll leave that to the parties, and any other  
12 calculations at such load consistent with the County's  
13 crankshaft contention.

14 We are not including in the further proceeding at  
15 this time material responsive to the Staff's October 10th,  
16 1984 letter to the TDI Owners' Group concerning the  
17 crankshafts.

18 We have already directed the Staff to address  
19 that letter in its findings on crankshafts which we will be  
20 receiving soon, and presumably in conjunction with those  
21 findings or something else that the Board and parties  
22 receive, we will be getting the reply to that information  
23 request. And then we can hear from the Staff either in some  
24 written review or an oral status update as to the  
25 significance of that information, and any other party will



1 WRBagb 1 have the option to argue that something about that  
2 information raises a significant new issue.

3 MR. ELLIS: Judge Brenner,--

4 JUDGE BRENNER: Give me just one moment, please.

5 (Pause.)

6 All right. The additional testing and  
7 inspections includes the strain gage tests on the cam  
8 gallery area as well as the inspections after the test run  
9 of the block and crankshaft. I don't have the letter in  
10 front of me outlining the scope of the tests, but I believe  
11 the parties know what they are.

12 Mr. Ellis.

13 MR. ELLIS: I guess it is my turn to seek a  
14 clarification.

15 Judge Brenner, you indicated that included would  
16 be any other calculations at 3300 Kw consistent with the  
17 County's crankshaft contention. I assume that what that  
18 means is that anything that has been ruled admissible  
19 before, even if they didn't do a calculation, they can now  
20 do a calculation. I understand that.

21 My question is: Let's hypothesize an XYZ society  
22 that has yet another one that we haven't heard of but which  
23 may lurk out there.

24 JUDGE BRENNER: That would not be consistent with  
25 the County's crankshaft contention and I'm sure was not

1 WRBagb 1 intended by that phrase in the County's pleading. At least  
2 we don't intend that.

3 Mr. Dynner, is my interpretation correct?

4 MR. DYNNER: Yes, sir. The contention, as you  
5 recall, specifically states the classification societies'  
6 rules that we were referring to. We are not trying to use  
7 this as a device to start a whole new litigation on  
8 different standards.

9 JUDGE BRENNER: I phrased it that way because it  
10 was easier for me than listing all the societies listed in  
11 the contention, but that's what I intended. It's the same  
12 substance.

13 MR. ELLIS: Yes, sir, I understand. I just  
14 wanted to be sure we weren't going to revisit the  
15 admissibility rulings.

16 JUDGE BRENNER: That's one reason I put this  
17 whole thing over until this morning, so that we would have  
18 the relaxed time frame necessary for clarifications which  
19 sometimes are necessary, and because I needed information  
20 pertinent to the schedule.

21 All right. Do you want to update us on certain  
22 items in terms of LILCO reports?

23 MR. ELLIS: Yes, Judge Brenner.

24 It is my understanding that the inspections on  
25 the crankshaft and the block, as of this date, either have

1 WRBagb

1 been completed or are virtually completed, and that the  
2 documentation is in the process of review and should be--  
3 The review should be completed by the beginning of next week  
4 or some time during the first three days of next week.

5           It is not finally decided yet but I would hope  
6 that there would be a report dealing with the crankshaft and  
7 the blocks that reports the results of those inspections by  
8 the first of December. The documentation that relates to it  
9 of course will be available prior to that, and if there  
10 isn't to be a report, of course we will proceed and furnish  
11 to the parties that documentation. Otherwise we will  
12 furnish both that document and the report around the first  
13 of December when they are done.

14           But the inspections have been completed or  
15 virtually completed as I understand it. In fact, let me  
16 check.

17           JUDGE BRENNER: Let me ask you another question.  
18 Let me ask you something else that you might want to  
19 consider.

20           Don't you think there definitely should be  
21 reports of these inspections? Here we are at the point of  
22 reopening, at the request of LILCO, and to proceed otherwise  
23 would proceed at the peril that-- I understand the written  
24 data will be available, but then there is going to be  
25 differences in interpretation of the data. We are going to

1 WRBagb

1 have people on the stand and then three weeks into their  
2 testimony find out that the two different experts would have  
3 agreed if only they had understood what the data in some  
4 inspection report, written in some ambiguous form as  
5 inspection raw data sometimes is, meant.

6 I guess I am on the verge of requiring such  
7 reports if you are not prepared to--

8 MR. ELLIS: We'll do it, Judge. We'll do it.

9 JUDGE BRENNER: It seems to be sensible from  
10 everyone's point of view, including LILCO's.

11 MR. ELLIS: Yes. The only thing that was of  
12 some concern to us is that we did not want to hold up the  
13 consideration of this matter while the other components that  
14 are also being examined and all of that is put together and  
15 run through an entire review process.

16 So we will break the blocks and the crankshaft  
17 out and do it that way, Judge. But we will have a report,  
18 as you suggest, of the block and the crankshaft.

19 JUDGE BRENNER: Do you want to commit to a date  
20 on it?

21 MR. ELLIS: My best information is that that will  
22 be completed on or before December 1st.

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1 WRBbrb

1 JUDGE BRENNER: All right. You may have wanted  
2 to give me certain other dates; I'm not sure.

3 MR. ELLIS: Judge Brenner, on the schedule, we  
4 certainly agree that perhaps giving the Staff the Christmas  
5 vacation may include a lot of days, but not a lot of days  
6 that they are going to be able to devote the time they  
7 need. And, therefore, LILCO would have no objection to  
8 extending the schedule in a way that gives the staff a week  
9 or ten days longer, and that would not include seven to ten  
10 days that are in the midst of Christmas; and, certainly, we  
11 would not want the County to have the burden of working on a  
12 Christmas Eve deadline, or anything of that sort, either.  
13 So we certainly have no objection whatever to adjustments of  
14 the schedule to accomodate people's reasonable holiday  
15 expectations.

16 JUDGE BRENNER: We'll certainly reach those  
17 accomodations in details when we get to it.

18 Is LILCO still providing information with respect  
19 to the qualified load to the Staff in response to the  
20 Staff's further questions?

21 MR. ELLIS: There is a set of questions  
22 outstanding, as Mr. Dynner indicated. The Staff has the  
23 information; LILCO is in the process of reducing that  
24 information to writing. It isn't that the Staff doesn't  
25 have the information. The Staff wants it, also, in writing.

1 WRBbrb 1 and the County would, of course, get a chance to have that.  
2 And it simply takes time to put the information in writing  
3 and run through the review cycle, and that sort of thing.  
4 My understanding in checking on that yesterday is that that  
5 is, again, virtually completed, and I would expect that the  
6 first part of next week that letter will be sent to the  
7 Staff and the County.

8 JUDGE BRENNER: Is there some dispute -- and I  
9 ask this because of a footnote in the Staff's filing --  
10 about access to inspections, inspection material or  
11 inspection information?

12 MR. ELLIS: No, sir. I don't think so. We made  
13 available to the County an opportunity to go to the site and  
14 inspect the site while the engine was torn down. The engine  
15 is in the process of being put back -- portions of it put  
16 back together now. But the County accepted that offer, and  
17 they spent, as I understand it, five to six hours at the  
18 site and examined the pistons and the block top and the cam  
19 gallery and the crankshaft. And my understanding is they  
20 took dozens of pictures. I also made arrangements for  
21 personnel to be there who responded to questions that were  
22 asked by the County consultant when they were out there. So  
23 I don't think that there is any question that they have had  
24 adequate access to the engine.

25 JUDGE BRENNER: I take it there is no dispute.

1 WRBbrb 1 Mr. Dynner?

2 MR. DYNNER: No. I don't know what footnote you  
3 were referring to. We, in fact --

4 JUDGE BRENNER: It's odd that it was a footnote  
5 by a party not affected by the apparent dispute; but I  
6 wanted to ask while we're all together. It's footnote 5,  
7 page 5 of the Staff's pleading. But you have adequately  
8 answered the question I asked.

9 Mr. Perlis, the Staff's Answer had the emphasis  
10 on reports from LILCO and noted that LILCO's schedule did  
11 not include certain reports on the schedule; and then the  
12 Staff, for its sake, included nothing about its reports in a  
13 pleading or its schedule. So those are the questions I  
14 have. Do you want to fill me in on the Staff's schedule for  
15 reports?

16 MR. PERLIS: I'll try.

17 First of all, for the 3300-kilowatt load, it's my  
18 understanding that the Staff will be issuing an SER on that  
19 subject sometime around the December 14th time frame; but I  
20 can't give it any more definite than that.

21 JUDGE BRENNER: That is surprisingly late,  
22 Mr. Perlis. Why is it so long?

23 MR. PERLIS: That SER will also be addressing the  
24 results of all the inspections that are taking place, so  
25 it'll be one SER dealing with the 3300 and the inspections

1 WRBbrb 1 that took place over the past few weeks.

2 JUDGE BRENNER: Can it not be broken down  
3 separately? I'm not going to hang up a substantive  
4 proceeding for format. We've discussed that many times in  
5 this proceeding. There's no reason to keep the two subjects  
6 together.

7 MR. PERLIS: If I could have a moment, here?

8 (Pause.)

9 MR. DYNNER: While they're discussing that point,  
10 I would state for the Board --

11 JUDGE BRENNER: Wait. Mr. Perlis may want to  
12 hear what you're going to say.

13 (Pause.)

14 MR. PERLIS: Judge, I can't answer the question  
15 as to whether or not it could be split out. We can look  
16 into that and try to get the 3300 portion out earlier, in a  
17 separate document.

18 JUDGE BRENNER: We need to set a schedule here.

19 MR. PERLIS: We'll try and make a call to  
20 Washington now, and find out when the power systems review  
21 will be completed.

22 JUDGE BRENNER: All right. We'll take a break  
23 shortly.

24 MR. PERLIS: I have someone here who can make the  
25 call.



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JUDGE BRENNER: All right.

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The point is that we're going to be providing for the County to file an issue, if it wants to file one -- a contention, which has to meet the requirements for reasonable basis and specificity.

MR. PERLIS: I understand the problem.

JUDGE BRENNER: And we're going to set that after the Staff's report because, depending on the Staff's report, that might affect the contention; it might affect whether there is an issue. I'm not worried about when the SER is going to be printed and bound and everything else that may take a week or two; I'm talking about the substantive review on the loads.

MR. PERLIS: I understand, and we'll be calling to find out when the Power Systems Branch review can be completed, and we'll have the information this morning.

JUDGE BRENNER: All right. December 1st or thereabouts would be a good date.

In other words, I'm prepared to accept the Staff's proposed discovery cut-off date of December 14, but not if that date comes before the issuance of the Staff's load review.

MR. PERLIS: I understand.

JUDGE BRENNER: Do you know -- although not as important, do you know when -- I guess you don't know which

1 WRBbrb

1 review was the pacing item when you gave me that December  
2 14th. I'd like to know, also, when the Staff's review of  
3 the inspections would be complete, everything related to the  
4 endurance test and inspections.

5 I think the Staff could have anticipated that  
6 these questions were going to come up.

7 MR. PERLIS: I understand that.

8 The Staff's review of the inspection results will  
9 depend, in part, on getting the reports from LILCO and my  
10 guess is, inasmuch as that would take one to two weeks, that  
11 that probably is the item that is responsible for the  
12 December 14th SER; but we can ascertain that.

13 JUDGE BRENNER: All right. When you ascertain  
14 that, we'll get back to it.

15 Mr. Dynner?

16 MR. DYNNER: I was just going to point out that,  
17 on both the LILCO motion and the Staff motion, they say that  
18 documents reflecting the basis for the 3300-kw qualified  
19 load were to be made available to us by November 12; and I  
20 just wanted to point out we are still awaiting those  
21 documents from LILCO. I don't know what they are.

22 MR. ELLIS: They have a good many of the  
23 documents already that they have obtained from the Staff.  
24 There will be more documents, but they already have a  
25 substantial number, certainly, to begin evaluation.

1 WRBbrb 1

2 JUDGE BRENNER: I assume they will have  
3 everything by the time that LILCO files its written answers  
4 to the Staff's questions, which you said would take place  
5 next week.

6 MR. ELLIS: That's correct, Judge Brenner.  
7 everything that exists, on which LILCO relies, or the 3300  
8 at that time. There may be, of course, something generated  
9 later.

10 JUDGE BRENNER: I understand that.

11 Well, I wasn't worried about all the details in  
12 LILCO's description of its schedule. But, for example, it  
13 states that the cam gallery strain gage data was completed  
14 and distributed to the Board and the parties on October 29;  
15 and if you mean something other than the testimony --

16 MR. ELLIS: I do, your Honor.

17 JUDGE BRENNER: -- the Board, of course, only  
18 received the testimony. I'm not worried about it now. I  
19 don't need to conduct my own discovery. We'll get the  
20 information that's pertinent when the testimony is put  
21 together again.

22 MR. ELLIS: Yes, sir. The testimony and the  
23 materials that were distributed at the time, as I understand  
24 it, also included the data and exhibits.

25 JUDGE BRENNER: I guess I just don't recall. But  
it doesn't matter. We're going to get new filings of

2 WRBbrb 1 everything the parties intend to put forward in testimony  
2 for the reopened and supplemented hearing.

3 We're probably going to have to take a break to  
4 get that information, but here is what we envision; and then  
5 I'll ask your advice on anything that you think is wrong  
6 with our vision, or something we have left out, all of which  
7 is entirely possible.

8 We had in mind using the Staff's discovery cutoff  
9 date. I must confess I haven't checked the days of the week  
10 for all these. That's a Friday. But establishing a  
11 discovery cutoff of that date assumes that the report by the  
12 Staff, the substance of the report -- it doesn't matter, as  
13 I say, if it doesn't have a printed cover and so on, but the  
14 full and exact substance, the substantively exact Staff  
15 report, would be out sufficiently in advance of that so that  
16 we can be including all issues in that discovery cutoff  
17 date.

18 MR. PERLIS: Just for clarification: we're  
19 talking about two separate reports here, and one of them --  
20 at least our inspection report -- would depend, in part, on  
21 LILCO's inspection reports.

22 JUDGE BRENNER: Right. We are not keying the  
23 discovery cutoff to the Staff's review of the diesel  
24 inspections.

25 MR. PERLIS: Okay.

2 WRBbrb 1

JUDGE BRENNER: We feel there's enough information available and that will be available from LILCO on that to set a discovery cutoff. We always have a safety valve of if there's any new information in the Staff review of those reports on that subject.

MR. PERLIS: I understand. So the earlier report you're talking about is the 3300 load report?

JUDGE BRENNER: Right, because then our differentiation is that that issue has not been plowed as thoroughly as the other related issues. It's that simple. And we want to give the County the benefit of the Staff report because -- and the next thing I'm getting to is -- I want to set a date for the filing of a County issue on that report.

Mr. Dynner, I would like to be able to do that a week after the Staff report is received by the County, with the knowledge that the County by that time will have had the opportunity to earlier have had LILCO's report, and so on.

Do you think that's fair?

MR. DYNNER: I have to tell you this when you say, "Do you think it is fair?"

Number one, I don't know what's going to be in the report. When you set seven-day time limits like this, we have got consultants working on this, and they're in California. And we can Federal Express stuff back and

1 WRBbrb

1 forth; but we're going to have just the general logistical  
2 issues of travelling. If we need to take a deposition,  
3 we're going to want our consultant or consultants to be at  
4 the deposition.

5           So my problem with what I see is developing here  
6 -- as the schedule is, it seems to me to be quite tight,  
7 especially given the prior experience concerning both the  
8 finality of the reports, which you have already addressed  
9 previously, and also the discovery -- a fair discovery  
10 period that has been experienced, I should say, by all  
11 parties in the litigation to date.

12           So I would like to see -- and I'll throw this out  
13 just as a general statement: I would see a somewhat more  
14 relaxed schedule to give us the time to implement the  
15 logistics that are going to be required. I'm not looking  
16 for a delay. I think the delay has been -- the shoe's been  
17 on the other foot, here. But I am looking for what I think  
18 would be a more -- from my point of view -- reasonable time  
19 frame for this.

20           And I think that can be my only comment at this  
21 point, because I don't know what material we're talking  
22 about. It may be that there's very little discovery  
23 required. It may be that there's more discovery required.  
24 I can't answer it until I've seen what the reports look  
25 like.

1 WRBbrb 1

JUDGE BRENNER: All right. I understand.

2 I wasn't -- I'm interested in setting a date for  
3 the County to file a contention with the required bases and  
4 specificity. I was not going to set that such that the  
5 discovery period had to be completed before that. I did  
6 want you to have the Staff's report, though.

7 And, again, you've got LILCO's FSAR. You're  
8 going to have -- you've got some information from LILCO; in  
9 any event, you're going to have all the information from  
10 LILCO next week, which will be -- which ends November 30th.  
11 LILCO believes it will have the material to you earlier, but  
12 even if it isn't until November 30th, at least by that date  
13 you'll have all the information, plus their answers to the  
14 Staff's questions. And for purposes of filing an issue with  
15 the bases and specificity, you don't need the Staff's  
16 report.

17 MR. DYNNER: I understand what you're saying,  
18 now, and I didn't --

19 JUDGE BRENNER: I'm not talking about your  
20 testimony. Did you misunderstand?

21 MR. DYNNER: No. I didn't think you meant  
22 testimony.

23 JUDGE BRENNER: And the discovery cutoff is going  
24 to be two weeks after the Staff report, not one week.

25 MR. DYNNER: Well, under that schedule, as I

1 WRBbrb 1 understand it, if I take days -- assume some days here. If  
2 I assume for a minute that December 1st is the date that we  
3 get the Staff report on the 3300, then we would have to file  
4 a contention on December 7, and discovery would end on  
5 December 14, as I understand what you're saying. And I just  
6 think that that doesn't seem to me to be reasonable because  
7 I don't know what is in the Staff report.

8 Now, obviously, we're going to have a few days  
9 prior to that -- namely, seven days prior to that -- in  
10 order to look over everything LILCO gives us, including  
11 their responses to the questions. And we've started looking  
12 over -- as I said before, we started an evaluation of the  
13 FSAR.

14 It just does seem to me that these seven-day  
15 things -- which are five working days, although we always use  
16 seven working days in our place; but not everybody else does  
17 -- that that's a very tight schedule. And I don't know what  
18 to say beyond that. I don't understand why the Board feels  
19 there is the justification or need for that tight a  
20 schedule.

21 JUDGE BRENNER: Well, I thought it was not  
22 tight. I'm considering your remarks now.

23 MR. DYNNER: Okay. I mean, you'll note that in  
24 our response, which I thought was -- and I was attempting to  
25 be pretty realistic about that, I asked for 15 days



1 WRBhrb 1 discovery period after the receipt of all of the final  
2 documents.

3 JUDGE BRENNER: You're going to have that under  
4 my schedule.

5 MR. DYNNER: I understand.

6 I am and I'm not. It depends on how you look at  
7 where it starts from.

8 JUDGE BRENNER: I took the two-week period from  
9 your schedule. That's why I thought it was being consistent  
10 with your views.

11 MR. DYNNER: Well, maybe I am being thrown off by  
12 something.

13 JUDGE BRENNER: Let me point something out.

14 One reason I knew I needed more time than  
15 yesterday with the parties is each's schedule conveniently  
16 leaves something out. LILCO's schedule leaves out any  
17 filings related to the loads. The Staff's schedule leaves  
18 out its reports but criticizes LILCO for not including  
19 LILCO's reports. The County's schedule proceeded on a  
20 wholly different basis, which we have already discussed; but  
21 nevertheless I tried to bring in the time frames in the  
22 County's schedule.

23 MR. DYNNER: Our schedule was on a seriatum  
24 basis; and I think the 15 days plus the 15 days, if you were  
25 looking at it, was 30. In other words, our schedule presumed

1 WRBbrb 1 that we would be dealing with one issue at a time -- that is  
2 to say, dealing with the issue of the 3300 load separately  
3 and then, later, dealing with the issue of the tests and  
4 inspections.

5 And I think what your schedule is doing is  
6 telescoping those two together and that would, in my view,  
7 cry out for more time. And I guess that's the observation  
8 that's pertinent.

9 JUDGE BRENNER: All right.

10 We're going to take a break, and the parties are  
11 going to get together -- which they should have done between  
12 the filings and now, at least, if not before the filings;  
13 but, of course, you needed certain substantive rulings from  
14 us which we've now given you -- and realize the things that  
15 are absent from the schedules. Let me give you some further  
16 guidelines, and then you can discuss it. I've already  
17 discussed some missing things.

18 If you take the Staff's schedule, get the date as  
19 to when the load report will be ready -- which I certainly  
20 hope is December 1st; but you'll find that out during this  
21 break -- and plug in dates for the completion of discovery  
22 on all items. And, as I said, the Staff reports on the  
23 diesel inspections and tests need not be completed before  
24 the discovery cutoff.

25 Put in a time for the filing of issues by the

2 WRBbrb 1 County on the load. And if we can follow the earlier  
2 procedure, maybe in fact what we would do is require that  
3 the parties discuss those issues before the filing, and then  
4 we could get a very short time frame for any answers; if  
5 possible, maybe even answers could be included in some sort  
6 of joint filing. Maybe there'll be agreement on what issues  
7 are admissible. Maybe there'll be agreement there are no  
8 issues. We don't know.

9 But, in any event, if a further response is  
10 needed, it can be done on a very short time frame.

11 In that same time frame, provide a date for the  
12 filing of testimony along the -- sequentially, as suggested  
13 by all the parties: LILCO, the County and then the Staff.

14 We think that something closer to a week to ten  
15 days between testimony is more reasonable rather than the  
16 two weeks suggested by the Staff. LILCO suggested a week.  
17 The County suggested ten days. Either of those would be  
18 acceptable. Ten days would be acceptable. Adjust it when  
19 you sit down with the schedule. I'm talking about the time  
20 period after LILCO would file testimony on all subjects.

21 MR. DYNNER: Are you talking about the time  
22 between the filing of testimony and the commencement of the  
23 hearing?

24 JUDGE BRENNER: No. The time between the receipt  
25 of LILCO's testimony and the time in which the County would

1 WRBbrb

1 file testimony; and then the same period for when the Staff  
2 would file testimony after the County's testimony. Adjust  
3 for the holidays as you said you would when you do that, in  
4 case that falls in there.

5 Then you can start the hearing a week after the  
6 receipt of the Staff's testimony, which is consistent with  
7 the Staff's suggestion, and we agree that we don't need a  
8 full two weeks, having had all the testimony earlier. The  
9 part we disagree with is 21 days between the County's  
10 testimony and the Staff's testimony. The Staff is going to  
11 get the same similar ten day period at that point.

12 Bear in mind, when you look at these testimony  
13 filing dates, that what we're going to have to have in the  
14 Staff's testimony is the full substance reflecting the  
15 completion of its reviews on all matters related to the  
16 proceeding. And I think it's going to work out that way,  
17 based on the Staff's schedule of December 14, at the latest,  
18 for its review of the diesel tests and inspections.

19 MR. DYNNER: Judge Brenner, just so I can  
20 understand something further --

21 JUDGE BRENNER: I'm not setting dates here, you  
22 understand.

23 MR. DYNNER: Yes, I understand. My question was  
24 going to be more of not the dates but the subject matter.  
25 Is it my understanding that you are saying that the County,

1 if we don't think the 3300 load is appropriate, that we  
2 would have to file a contention and meet the requirements of  
3 a contention for specificity -- and I assume timeliness  
4 would be no problem?

5 JUDGE BRENNER: Right.

6 MR. DYNNER: I'm also assuming, in the context of  
7 the ruling, that we wouldn't have to file any contentions  
8 with respect to the tests and inspections.

9 JUDGE BRENNER: Correct.

10 MR. DYNNER: Thank you.

11 JUDGE BRENNER: We know what the issue there is.  
12 You've already had an admitted issue on the subject. That  
13 is just further information which we've ruled is material  
14 enough to reopen the proceeding. It's significant enough to  
15 the outcome to reopen and permit this supplementation of the  
16 proceeding.

17 The reason we want an issue on the load is so  
18 that we know whether you have met the requirements to be  
19 entitled to litigation, and so as to have a focussed  
20 litigation.

21 MR. DYNNER: That certainly is fair enough, and  
22 I'm not at all complaining about that.

23 I would make two comments about it. One is a  
24 comment, and one is a question.

25 The comment is: I heartily agree with you that

1 WRBbrb 1 we would like time somewhere in this schedule to have the  
2 consultants or experts of the parties get together and  
3 discuss any differences of views that they may have on the  
4 3300 load, assuming that that's the load that the Staff  
5 approves. And, second --

6 JUDGE BRENNER: But not a lot of time, and I'll  
7 tell you why. I've become a firm believer that these  
8 experts can eventually show that they can conduct the same  
9 amount of work when there's a time frame, and I think they  
10 can perform all those meetings within whatever normal  
11 schedule would be set otherwise.

12 MR. DYNNER: Well, I say that because the obvious  
13 point that -- if experts are tied up in the preparation of a  
14 contention, they're not also available for discussions with  
15 the other party. And I'm not making any plea about any  
16 particular amount of time. I just think that your point is  
17 a valid one, and I think my point's a valid one, about  
18 people not being able to do two things at the same time.

19 JUDGE BRENNER: It seems to me that they're doing  
20 the same thing in those processes. But we'll come back with  
21 hearing from the parties on the schedule, and we'll discuss  
22 it.

23 MR. DYNNER: Okay.

24 My second point was that, assuming for the moment  
25 that we would file a contention on 3300, do you envision a

1 WRBbrb 1 discovery period for the other parties? I mean, what's the  
2 mechanism? Normally, when you file a contention, you  
3 obviously have a whole mechanism; and clearly that's not  
4 necessary here. But are you looking for some kind of  
5 discovery period in there for the other parties?

6 JUDGE BRENNER: What I had in mind with the dates  
7 I was going to suggest is that the discovery period would  
8 already include discovery on matters related to the load,  
9 primarily from the County's point of view, but that the  
10 discovery period would end about a week after the issue was  
11 filed. And one advantage of that is I can have the same  
12 cutoff date for all subjects and any party that wants to use  
13 that last week of discovery for any discovery, which would  
14 include discovery of the County by the other parties, they  
15 can do that.

16 Now, I know that requires the parties to have  
17 discovery before we rule on whether an issue is admitted;  
18 but I think that is a minor burden, considering the  
19 discovery is going to be useful for the issue of negotiation  
20 and formulation stage, to some extent. In any event, and to  
21 the extent that that's a burden to the other parties, I'm  
22 less worried about it because of the posture of why we got  
23 here.

24 Discovery, by the way, would not include  
25 interrogatories. I think we know that. Whatever

1 WRBbrb

1 information you exchange informally, of course, that's the  
2 path to encourage, primarily. But depositions would be the  
3 form of discovery, and document discovery also. But,  
4 presumably, that can all be done informally, too. So I am  
5 not setting precise time frames for discovery requests and  
6 responses, and so on. The parties have worked too long and  
7 too hard together to need that, in my opinion.

8 MR. ELIIS: Judge Brenner, in setting the  
9 schedule that the parties will try to arrive at agreement on  
10 here in a moment, I don't think there's any problem at all,  
11 given what's gone before, for LILCO to be able to file  
12 testimony on the tests and inspections; given the focus that  
13 we've had on the issues, we think we can do that.

14 But it has been my experience in this proceeding  
15 that issues that are new are far more focussed if we have  
16 what the County wants to litigate about the 3300 in front of  
17 us before we respond to it, rather than to try to cover the  
18 waterfront. I've found it difficult, in many instances, to  
19 write testimony, perhaps creating straw men where none  
20 existed only to find that the real opponent is something I  
21 didn't really see.

22 So I wonder if the Board contemplates the filing  
23 of testimony first by the County on that issue, should it  
24 choose to litigate it, and then followed by LILCO and the  
25 Staff?



1 WRBbrb 1

2 JUDGE BRENNER: No, we didn't, and we're not  
3 going to do that. But the other side of the coin is -- and  
4 you may not have realized that we were going to do this,  
5 although you now realize it. We're going to require that an  
6 issue be framed with sufficient specificity and bases. I  
7 understand that's not the same as getting all the details of  
8 their testimony.

9 But, as I said, you'll have another week of  
10 discovery; that will be some help. The week will be open  
11 for all parties' discovery. But you can use it for that  
12 purpose. You'll have the issue, at least as filed.

13 Now, you're not going to get much time between a  
14 Board ruling and testimony, and with all these accommodations  
15 that we're trying to give everybody else, I have to see what  
16 that's going to do to the Board's schedule in terms of  
17 ruling on an issue, if the parties need a full week to  
18 respond.

19 MR. ELLIS: I think that will work out,  
20 presumably in depositions: when we ask them what the issues  
21 are, they'll be able to tell us rather than say they haven't  
22 yet decided. And that will help matters.

23 JUDGE BRENNER: As I said, it's my hope that the  
24 parties can stipulate -- if there is an issue, stipulate its  
25 admissibility, although not the merits, of course -- not  
necessarily the merits, of course.

1 WRBbrb 1

2 MR. ELLIS: You've said timeliness is not an  
3 issue, so the only issue is going to be whether we agree on  
4 specificity.

5 JUDGE BRENNER: Right. And bases.

6 I know I left something out. While you're having  
7 this discussion, decide together, if you can, whether we  
8 should set the schedule now for the proposed findings on  
9 blocks, to the extent it has been litigated, or whether we  
10 should wait until the completion of the litigation. But if  
11 we wait, what we would like to do is to provide some  
12 mechanism for earlier findings on the blocks.

13 And one mechanism -- as I say, one mechanism is  
14 to set the schedule now. If that's a problem for any party,  
15 we'll hear from that party.

16 Another option is to wait; but when we come back  
17 to the continued litigation -- and think about this; I  
18 haven't thought it through fully -- but see if matters  
19 related to the blocks could be taken up first. And then  
20 we'd set a findings schedule for the blocks, knowing that  
21 the parties had time during this period to cull the record  
22 and put much of it together, even though we didn't require  
23 that it be filed.

24

25

1 WRBeb

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2 In that way we can have some findings. What I  
3 want to avoid is having to wait the full 60 days for the  
4 findings to come in after if we don't require some findings  
5 on the blocks now.

5

6 There is a lot in the record on that subject that  
7 is not going to be greatly or directly affected by the  
8 further information or even where it is, it can be added  
9 on. But if there is a reason not to require any proposed  
10 findings now on it, we will do that provided we can have the  
11 other accommodation that I indicated. So think about that,  
12 also.

12

13 Of course we never changed the crankshaft  
14 schedule. It would have been too late to change it for  
15 LILCO and the County at this point, and we're not changing  
16 it for the Staff or for the reply either. We understand  
17 that things are going to be adjusted, but we'll be able to  
18 make use of the findings in this time frame before we start  
19 the litigation again, or continue the litigation.

19

20 How much time do you think you need? Do you need  
21 a full half hour?

21

22 MR. ELLIS: Yes, sir, I think that would be  
23 helpful.

23

24 JUDGE BRENNER: All right. Let's take until  
25 eleven o'clock. I am inferring that there are no other  
issues that the parties are going to raise before us that

1 WRBeb 1 we have to think about.

2 MR. ELLIS: There is one point that I thought I  
3 might clarify. Yesterday I indicated to the Board what the  
4 company's intended use of the TDI's diesels was, and I am  
5 correct in that.

6 I also indicated that the 20-megawatt gas turbine  
7 is going to be retained. I was correct on that. What I was  
8 not correct in was also advising the Board that there is  
9 also a 50-megawatt gas turbine there and there are also four  
10 EMD diesels that are mobile diesels that are being used in  
11 the low-power area.

12 JUDGE BRENNER: I am sure Judge Miller knows all  
13 about this.

14 MR. ELLIS: Yes, he does.

15 And those will be kept until the first refueling  
16 outage, so until the first refueling outage, there will be  
17 three Colts -- or three TDIs and three EMD diesels, the two  
18 gas turbines, and as soon as the Colts are installed they  
19 will be there, too.

20 But what I did advise the Board of, of the use  
21 of-- I should have said four EMD diesels. But what I did  
22 tell the Board about the use of the TDIs after the first  
23 refueling outage is valid.

24 JUDGE BRENNER: One footnote for Tuesday, the  
25 conference of parties.

1 WRBeb

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2 It occurred to me that I'm not sure which Counsel  
3 is going to be there for which parties, and that's okay.  
4 But in terms of finding out the exact location of the  
5 conference, let me put it the other way to make it easy for  
6 Mrs. Lane. If the parties would have their representative  
7 call her on Monday morning, she will be able to tell them  
8 the location.

8

All right, let's recess until eleven o'clock.

9

(Recess.)

10

JUDGE BRENNER: Back on the record.

11

12 MR. ELLIS: Judge Brenner, as you perhaps  
13 predicted and hope, we have, subject to some explanations  
14 and qualifications, reached some agreement on the schedule.

14

(Document handed to the Court.)

15

16 MR. ELLIS: I have handed you a sheet-- I'm  
17 sorry, Judge Morris, I only have one copy.

17

18 First, Judge Morris, at the top we have to add  
19 another item before Number 1, and it is P&L inspection  
20 reports. P&L will be doing independent inspection reports  
21 on the results of the inspections and the tests, and they  
22 will be submitted to the Staff and the parties. The date  
23 for that is December 3rd.

23

24 The LILCO inspection reports on the crankshaft  
25 and the block, as I reported I think earlier, December 1,  
we've decided to do everything that Monday, December 3rd.

25

1                   The Staff SER or the essence of it on 3300 Kw  
2 will be provided on December 3rd, contingent upon receiving  
3 additional information from LILCO this coming week. I had  
4 reported to the Board that I felt the staff had all of the  
5 information verbally. There are apparently some questions  
6 that have not been answered orally or in writing, and we  
7 will attempt to have all that information to the Staff, and  
8 we think we can, by next week so that the staff can make  
9 that date of December 3rd. However, that December 3rd date  
10 is contingent on answering the currently-outstanding  
11 questions.

12                   MR. PERLIS: Excuse me.

13                   If I could add something here, Judge?

14                   What we will be giving out on the 3rd will be an  
15 explanation of the Power System Branch's final position.  
16 The actual wording may change between that and the eventual  
17 SER but the gist of the position would be final by then.

18                   MR. ELLIS: Next--

19                   JUDGE BRENNER: Let me put that in my own words.  
20 The substance is not going to change?

21                   MR. PERLIS: That's correct, but the individual  
22 wording might be played around with.

23                   JUDGE BRENNER: No problem.

24                   MR. ELLIS: Next we face the deadline for the  
25 filing of a contention by the County on the 3300. And we

1 AGBeb 1 agreed that that should be on December 17th. We were  
2 willing to accommodate that date, and I think the parties  
3 can agree on this, based on what we think ought to be the  
4 discovery schedule.

5 We've agreed to cut discovery off for the County  
6 December 17th, and cut discovery off for the Staff and LILCO  
7 on December 21st. And we are going to try to accommodate  
8 each other. We agree to do our discovery that week before  
9 Christmas provided we can do it in D. C., so that we can get  
10 it all done.

11 And we discussed the number of witnesses and that  
12 sort of thing, and we think it can be done. And Mr. Dynner  
13 has graciously offered to produce them earlier if his people  
14 are prepared, and if it's practical and reasonable to do  
15 so. It may not be, and for that reason we've provided for  
16 that extra week for Staff and LILCO to conduct their  
17 discovery.

18 The next date is--

19 JUDGE BRENNER: I'm sorry, I lost you because I  
20 was reading this shorthand rather than listening to you, and  
21 I apologize.

22 Whose discovery is getting cut off first?

23 MR. ELLIS: The County, December 17th; the Staff  
24 and LILCO cutoff, December 21.

25 JUDGE BRENNER: Discovery of those parties?

AGBeb

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MR. ELLIS: Discovery by those --

JUDGE BRENNER: Discovery by those parties?

MR. ELLIS: Discovery by those parties of the County. Discovery of LILCO by the County is cut off December 17th, the date on which their contention is to be filed.

Then December 17th is also the date for the Staff SER on the inspection and testing, and the formal SER on the load.

Thereafter, we decided that it makes sense not to try to get everything done over the Christmas holidays, and so we decided that the first date would be January 15th, which is a Tuesday. And I won't go into how we reached a Tuesday rather than a Monday. It is labyrinthian in complexity.

JUDGE BRENNER: You have other Mondays previously, and I take all these dates as received dates.

MR. ELLIS: Yes, sir.

JUDGE BRENNER: Okay.

MR. ELLIS: Next we decided to give everyone ten days as opposed to seven days, so the County's testimony on all issues will be due the 25th, and staff testimony on all issues the 5th, and I've put the days of the week I think next to that.

And then commencement of hearings on the 12th.



1 AGBeb

1 This could-- Obviously, the Board may want to vary that,  
2 depending upon the availability of courtrooms and  
3 availability of the Board.

4 Mr. Dynner and Mr. Perlis may want to amplify,  
5 but I think that sums up the gist of our discussions during  
6 the break.

7 I will add just a couple of things to it for  
8 completeness.

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2 First of all these dates are, I think it's  
3 correct to say from everybody's point of view, based upon  
4 the assumptions that in fact all of the reports and  
5 documents which are in this schedule shown to be received by  
6 December 3rd will in fact be received by that date because I  
7 think it is fair to say we have all keyed off by that date.  
8 And it would not be our intention to, from the County's  
9 point of view, to make any changes in the schedule based  
10 upon a day or so. But I just wanted to make that point.

11 Secondly I did say that as a realistic matter we  
12 would contemplate a cutoff date for the County to take  
13 discovery of the other parties by December 17th. I left  
14 myself a little bit of a loophole because I can't foresee  
15 any possibility of the need for discovery after that date on  
16 behalf of the County. I did say and I think it was agreed  
17 that if I come in with some kind of a special reason or a  
18 special need that that would be considered.

19 And finally, I have not been able today and will  
20 not before the adjournment today to check on the  
21 availability of my prospective witnesses if we decide to  
22 file a contention. And we are going to make every effort to  
23 cooperate with the Staff and LILCO on their ability to take  
24 the depositions in that period following the 17th, but in  
25 fairness I do have to say that I have not had the  
26 opportunity to check on the availability of my prospective

2 AGBagb 1 witnesses yet.

2 JUDGE BRENNER: All right.

3 MR. PERLIS: Excuse me, Judge. The only thing I  
4 wanted to add, and I believe Mr. Ellis did indicate this:  
5 the Staff report on 3300 Kw is very much dependent upon our  
6 getting additional information which I am told we will be  
7 getting early in the week. But we do have some questions  
8 that are unanswered and until they are answered we are not  
9 going to be able to come out with the report. So while I  
10 think we can make the 3rd, it is not entirely in our hands.

11 MR. DYNNER: For completeness of this report, I  
12 think we should also mention that we briefly attempted to  
13 hold a discussion concerning our views on the findings and  
14 fairly quickly concluded that we all had to check with other  
15 people and consider other factors and therefore we are  
16 requesting that you give us until next Tuesday in order to  
17 address that issue and that will give us some time to check  
18 with various people and to have some discussions among  
19 ourselves.

20 JUDGE BRENNER: All right.

21 MR. ELLIS: It might help in that connection,  
22 Judge Brenner, if we had a little more guidance. My initial  
23 inclination and I think LILCO's initial inclination would be  
24 that it would be prudent to go ahead with a findings  
25 schedule for that portion of the block testimony that has

1 already been taken and then merely add I think you indicated  
2 that you would take the blocks up first before the 3300 in  
3 February and then just to add on what we would hope would be  
4 a smaller blip onto that. That would be our initial  
5 inclination, but you indicated that there might be, if we  
6 delayed at all until then, that it would be an abbreviated  
7 schedule after then. And I guess I -- it will be a bigger  
8 record to have an abbreviated schedule. The assumption, of  
9 course, is that the work has been largely done by then --

10 JUDGE BRENNER: Right.

11 MR. ELLIS: And I suppose what we might do is  
12 discuss what an abbreviated schedule might be. The problem  
13 I have is the difficulty of predicting that it is going to  
14 be a small blip at the other end that would warrant an  
15 abbreviated schedule. I might want -- that's why I need to  
16 discuss it more and discuss the availability of people.

17 JUDGE BRENNER: I didn't mean to say that no  
18 matter what happens later we would stay with an abbreviated  
19 schedule. And I also -- if the findings were filed now on  
20 this schedule I didn't mean to say that the blocks would  
21 then necessarily be taken first. I meant it as an  
22 alternative. We could still take the blocks first, although  
23 I have a concern that when you get into the complications of  
24 witness scheduling, I think that could become a problem at  
25 that end.

1 AGBagb 1

2 What I had in mind as an abbreviated schedule was  
3 probably something like 15 days after the completion of the  
4 blocks for LILCO to file and then I would keep the normal  
5 differential for the other parties after that.

6 MR. ELLIS: Judge Brenner --

7 JUDGE BRENNER: But I didn't think it through, as  
8 you can tell. Another possibility is just the fact that we  
9 would start the findings schedule from completion of the  
10 blocks even if we kept the same 30 days would still be an  
11 acceleration.

12 MR. ELLIS: May I inquire whether the Board is  
13 also considering page limitations for the black findings  
14 and, if so, in light of the experience with the crankshaft  
15 findings to date, if the Board has formed any view as to  
16 what that limitation might be?

17 JUDGE BRENNER: I think we were going to stay  
18 with the same limitation we had applied to the crankshaft of  
19 90 pages. That would be for what was done so far.

20 Now if we waited and set a new schedule after, we  
21 might stay with the same 90 pages, we would revisit the  
22 subject later. But if we had findings now I didn't mean  
23 that your 90 pages -- you wouldn't have to leave room for  
24 the unknown during the next phase, it would be 90 pages  
25 based on what was done so far, but that included -- you  
would have to leave room for reply in the case of LILCO.

1 AGBagb 1

2 MR. DYNNER: Am I correct that the Board's  
3 thinking about the findings is like mine, the assumption  
4 that there will be comprehensive findings on the block  
5 rather than piecemeal?

6 That is to say that --

7 JUDGE BRENNER: I am giving you the option of  
8 advising us of what you prefer.

9 MR. DYNNER: Okay.

10 I meant comprehensive with the abbreviated  
11 schedule is what you were talking about.

12 JUDGE BRENNER: Yes.

13 MR. DYNNER: Okay.

14 The point point I would make, just to throw it  
15 out, that it seems to me page limitations we really ought to  
16 wait until Tuesday to have a meaningful discussion about  
17 that because whether or not we do this test that has been  
18 proposed and how it's done and the outcome of that could  
19 obviously affect the volume of material that would be  
20 covered in the findings.

21 JUDGE BRENNER: That's okay, too. I think what I  
22 said this morning was to answer the question of what our  
23 thinking was.

24 All right. Well we appreciate the parties  
25 working out a schedule which is perfectly acceptable to us.  
Let me point out that one thing you did not provide for

1 AGBagb 1 that I see now -- and if I see any other things I'll let  
2 you know on Tuesday -- we didn't ask you to provide for it,  
3 so I'm not criticizing it, but the one thing that's not  
4 there is an answer to the filing of any contention by the  
5 County on 3300 Kw.

6 And what we would have in mind would be a week  
7 for LILCO and the staff to file answers to any such filing  
8 -- and maybe you don't need it, because you will have fully  
9 discussed matters before December 17th with the County, so  
10 that it may be you can get your answers in simultaneously,  
11 if there is some agreement, or just a day or two  
12 thereafter. But maybe we should set the period now, if  
13 needed, a week after that.

14 MR. ELLIS: Judge Brenner, I think the week is a  
15 reasonable period. The only problem I have with it is that  
16 that's the week we have set aside to do the discovery of the  
17 County. I realize that the basis and specificity are going  
18 to be the only grounds and we certainly will have an  
19 opportunity to discuss it before and, but I am a little  
20 leery of doing the discovery right at the time that  
21 we would be writing -- if we do, it may be that we  
22 wouldn't -- writing a pleading contesting the specificity  
23 and the basis.

24 JUDGE BRENNER: All right. Actually that gets  
25 you right into the holiday week anyway when, frankly, the

1 AGBagb

1 Board is not likely to be available as a Board anyway. But  
 2 if you carry it beyond that to two weeks that gets you to  
 3 December 31st, not a good day. But I am trying to figure  
 4 it out. You say you allowed for the holiday period for  
 5 everybody else and perhaps we should not worry about ruling  
 6 on this issue, if we have to rule. If you want to file  
 7 testimony on the 15th, say, our ruling is presumably far in  
 8 advance of that. That's feasible.

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1 AGBeb 1

MR. ELLIS: I'm trying to get a calendar out,

2 Judge Brenner.

3 I think under the circumstances that we should  
4 aim for the 21st, but as a deadline we would like to have,  
5 in case there is discovery that goes on during that week--

6 JUDGE BRENNER: Well, I was going to suggest the  
7 24th, not the 21st, Christmas Eve.

8 I don't want to mislead you. I don't know that  
9 the Board is going to be available starting with the week of  
10 the 24th. I can tell you that the first two weeks in  
11 January we will not be available as a Board. We will not be  
12 together, and in terms of any necessary deliberations, it  
13 will be difficult for us, although not impossible.

14 MR. ELLIS: I ask then, under the circumstances,  
15 can we-- We'll go ahead and labor under the 24th, and if  
16 circumstances require some relief, I hope we can approach  
17 the Board.

18 JUDGE BRENNER: That's fine. You won't get a  
19 ruling that week anyway. That's what I'm trying to tell  
20 you.

21 MR. ELLIS: Maybe the ruling of the Board-- The  
22 Board wouldn't contemplate ruling then on this until January  
23 in any event?

24 JUDGE BRENNER: That's correct. But we might  
25 read it before January 2nd, individually.

1 AGBeb

1 MR. ELLIS: Well, I might suggest then that--

2

JUDGE BRENNER: What I'm looking at is your

3

January 15th testimony filing date, you see,--

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MR. ELLIS: Yes, your Honor.

5

JUDGE BRENNER: -- and I'm trying to do what we

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can to make things easier for you. And that would be as

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prompt a ruling as feasible for you.

8

MR. ELLIS: Would the 27th or the 28th put it in

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the hands of the Board in enough time? I would anticipate

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in doing that that Mr. Dynner's typically eloquent use of

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the written language would be sufficient to handle any

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points he would want to make, and I would simply have to

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labor under the disadvantage of whatever we could put down

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on paper.

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JUDGE BRENNER: Well, if we need-- I heard

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Mr. Dynner's comment, and if we need any oral discussion of

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it we can set something up later in the week of December

18

31st.

19

MR. ELLIS: I don't currently anticipate-- You

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have already indicated that the dispute is narrowed to basis

21

and specificity and I wouldn't regard this as being

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something that could not be adequately explicated in papers,

23

if indeed it even arises.

24

JUDGE BRENNER: All right. Why don't you try to

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get any necessary answer to us on the 21st, but that's not

1 AGBeh . 1 the deadline. That's just an effort, and it could make  
2 things easier for us and, in turn, easier for you.

3 Well, I don't want to mislead you. I don't think  
4 we'd get the ruling out the following week in any event, but  
5 we'd be able to prepare things individually and then discuss  
6 it as a Board.

7 In any event, as a deadline, why don't you get it  
8 to us by the 27th, and we will make arrangements to get it  
9 delivered to us if we are not otherwise in the office.  
10 We'll make arrangements from our office to do that.

11 The fact that the deadline is during a period  
12 when you are all going to be together anyway for other  
13 purposes may work out well in the sense that if there are  
14 some clarifications needed, keeping in mind that you want to  
15 keep the decision time down after we receive the written  
16 answer, you could informally obtain those clarifications and  
17 perhaps reach some agreements, and then those, too, can be  
18 reflected in the answers.

19 We have no objection, as I say, to a joint filing  
20 initially on the 17th if that can be worked out, a joint or  
21 simultaneous filing, or some joint or simultaneous filing  
22 after, in which the County's further views could be  
23 reflected, given any further discussions and so on.  
24 Whatever is easier for the parties to get their positions  
25 before us will be fine.

1 AGBeb 1

2 We on our part will try to hold to the schedule  
3 in terms of commencement of hearings on the week of February  
4 12th. We may choose to start on the 11th, I'm not sure,  
5 depending on hearing schedules and so on.

6 Is that a federal holiday?

7 MR. ELLIS: That's one of our secrets that I told  
8 you led to the complexity of the schedule. We thought that  
9 might be some late great birthday.

10 MR. PERLIS: Presidents' Day is either the 11th  
11 or the 18th. I'm not sure which.

12 JUDGE BRENNER: I don't know when it is.

13 MR. ELLIS: In Virginia we only celebrate Robert  
14 E. Lee's Birthday.

15 JUDGE BRENNER: I was going to ask you when that  
16 was.

17 MR. ELLIS: We have Lee-Jackson Day in the fall  
18 of every year.

19 JUDGE BRENNER: I understand that when Northern  
20 Virginia splits off they will no longer be celebrating that.

21 MR. DYNNER: Judge, on the hearing conference of  
22 the parties on Tuesday next, is it your intention -- at 8:30  
23 in the morning -- to take up the remand issues first, or to  
24 take up the few diesel issues first?

25 JUDGE BRENNER: You give me that time with such  
emphasis. It is not my favorite time of day either.

: AGBeb 1

MR. DYNNER: I am up and around by 8:30, I assure  
2 you.

3

JUDGE BRENNER: Whatever the parties prefer.

4

MR. ELLIS: I thought with Mr. Dynner that we'd  
5 do it afterwards, if that's what you are suggesting.

6

MR. DYNNER: I wasn't suggesting anything. It  
7 doesn't matter to me because I only live about 20 minutes  
8 from there.

9

Mr. Ellis might have a preference, which I am  
10 willing to accommodate.

11

JUDGE BRENNER: Whatever the parties want will be  
12 fine with us.

13

MR. DYNNER: Do you have any feel for how long  
14 the remand issues are going to take? Are we talking about a  
15 half hour or--

16

JUDGE BRENNER: It depends on what else the  
17 County has to tell us. I have given you the big hint that  
18 based on what the County has filed so far, it won't take  
19 very long. But the County will be on the short end of our  
20 ruling.

21

MR. DYNNER: I had the impression that you had  
22 said that.

23

JUDGE BRENNER: Right. I wanted to give the  
24 County notice.

25

MR. DYNNER: I'm just not the attorney who is

1 AGBeb

1 aware of those matters, so that I just pass on the messages  
2 of course.

3 JUDGE BRENNER: I guess if I had a preference I  
4 would rather do the blocks first, for a few reasons,  
5 including the fact that we want to key Judge Ferguson into  
6 the subject, and he will be there on Tuesday, and then have  
7 an opportunity for us to talk about it during a break that  
8 might naturally occur in the mid-morning time frame after  
9 you have already told us whether there is an agreement or  
10 whether we have to rule, or whether you want us to continue  
11 to defer our ruling, which I have already said we would do  
12 as long as we set a time certain.

13 All right. The only other thing I wanted to see  
14 if we could look at is you indicated that if things changed  
15 by a day or two that would not throw the schedule off, and I  
16 appreciate that.

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2 Some things are more important than other things  
3 in terms of the Staff reports, and I want the Staff to know  
4 that. You have given us a message about the December 3rd  
5 date, I understand that, and that's fair enough.

6 The other side of the coin is, the Staff should  
7 not slip that date at all if LILCO lives up to its  
8 commitment.

9 There are complex schedules that are going to be  
10 developed here into February, including some complicated  
11 Board schedules.

12 MR. PERLIS: I understand that. The only point I  
13 want to make is that it may well be the case that when we get  
14 the answers to the questions next week those answers may  
15 generate additional questions. I don't know that they will,  
16 but--

17 JUDGE BRENNER: Get everybody in there for a  
18 meeting and keep a transcript. Get the County in there  
19 and get the answers.

20 In other words, as counsel, let the technical  
21 staff know what is happening on the schedule of this  
22 proceeding.

23 MR. PERLIS: I understand that.

24 JUDGE BRENNER: And let them be flexible rather  
25 than, by inertia merely following their normal procedures,  
26 keeping in mind, of course, the goal of obtaining the

1 AGBwrb 1 substance necessary.

2 MR. PERLLIS: That's fine. I just wanted to point  
3 out that the questions -- at least the answers that we're  
4 waiting for -- are viewed by Power Systems Branch as  
5 important ones, and when we get answers next week those  
6 answers may not completely resolve everything.

7 JUDGE BRENNER: You see why that is an important  
8 date in terms of the days we've had to discuss--

9 MR. PERLLIS: I appreciate the importance of the  
10 date.

11 JUDGE BRENNER: All right.

12 On the other hand, it strikes me that the Item 5,  
13 the December 17th formal SER at 3300, assuming, as we have  
14 assumed, that there will be no change in substance and the  
15 fact that that will include the inspection and testing SER,  
16 it is important to get out in that timeframe. But that date  
17 per se isn't critical; in fact, if I were you I would move  
18 it to the 18th already, since it is a receipt date, and then  
19 that will-- Is there a reason why that had to be a Monday  
20 instead of the 18th?

21 Let me suggest you make that the 18th. The quid  
22 pro quo for this is you're not getting changed to the 3rd  
23 lightly.

24 MR. ELLIS: Judge Brenner, No. 5 on the list I  
25 gave you we'll change to the 18th?



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2 JUDGE BRENNER: Right. And the other point I was  
3 going to make is that, well, if it moves a day or two, that  
4 should be one way that the flexibility that you all  
5 indicated you would have could easily be accommodated if it  
6 turns out to the 19th or something like that. But don't  
7 take that as an invitation to miss it by a week.

8 All right. I wanted to give the parties some  
9 advice on what they might need to come back to us on or what  
10 they might not need to come back to us on and those two  
11 examples were utterance of the continuum.

12 All right. I believe we are done. We do  
13 appreciate what the parties have done. It is much better  
14 when the parties can do it rather than have all of the  
15 parties to have the burden of our rulings which each of you  
16 may have disliked for different reasons and on Tuesday if we  
17 could take the blocks up first that would be helpful but not  
18 essential. We will accomodate your schedules.

19 We hope to complete everything we have to do on  
20 Tuesday by noon. That is not an absolute cutoff, it is a  
21 goal. That's one reason why we are starting at 8:30, in  
22 fact, that is the reason for starting at 8:30.

23 All right. Thank you all very much for your time  
24 and effort throughout the proceeding so far. Although you  
25 may not think we appreciate that from moment to moment in  
the hearing we really do sincerely. And I hope all of you

1 AGBwrb

1 get a little bit of rest outside of the hearing room. We'll  
 2 see somebody on Tuesday and some of you folks when we resume  
 3 the hearings in February.

4 (Whereupon, at 11:55 a.m., the hearing in the  
 5 above-entitled matter was adjourned.)

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CERTIFICATE OF OFFICIAL REPORTER

This is to certify that the attached proceedings before the  
UNITED STATES NUCLEAR REGULATORY COMMISSION in the matter of:

NAME OF PROCEEDING:

LONG ISLAND LIGHTING COMPANY  
(Shoreham Nuclear Power Station)

DOCKET NO.: 50-322-1 (OL)

PLACE: Hauppauge, New York

DATE: November 16, 1984

were held as herein appears, and that this is the original  
transcript thereof for the file of the United States Nuclear  
Regulatory Commission.

(Sigt) William R. Bloom Anne G. Bloom  
(TYPED) William R. Bloom & Anne G. Bloom

Official Reporter

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