

1 the Staff regarding the 3300 load analysis so that we in
2 turn could have our consultants perform such an analysis.

3 We did receive a package of documents from the
4 Staff which we promptly turned over to our consultants to
5 begin their analysis. We have not yet received information
6 from LILCO which LILCO said they were going to give us in
7 their motion, and previously.

8 We have been informed by the Staff that the Staff
9 is still awaiting responses from LILCO to questions posed by
10 the Staff concerning the 3300 Kw qualified load. And
11 therefore the County has been at a very considerable
12 disadvantage in reaching any conclusions concerning the 3300
13 load.

14 And as we pointed out, we felt it important, for
15 all of those reasons, to have a fair opportunity to do this
16 analysis and to have that opportunity before we have to get
17 ourselves engaged potentially -- and I say "potentially"
18 because I don't know if there is going to be another
19 litigation -- but potentially in litigation at the lower
20 loads.

21 Now the reason I strongly argue that the
22 threshold issue of 3300 should be determined is that the
23 FSAR-proposed amendment has in fact not yet been approved by
24 the Staff. And I was anxious, from my client's point of
25 view of the investment of time, effort, and money in this

1 case, not to go through another round of litigation
2 potentially at 3300 only to find that the Staff's analysis
3 or our analysis was that you needed 3400 to run these
4 diesels.

5 If that were the case and the Staff came
6 potentially in and said that it has reviewed LILCO's
7 proposed amendment to the FSAR and concluded that the
8 appropriate qualified load is 3400, and if our consultants
9 said the same thing, it would seem to us to be a
10 considerable and unnecessary waste of time, effort and money
11 to have gone forward litigating 3300.

12 I put that to the Board because of our strong
13 feeling that although most of the litigation to date has
14 been and will be directly relevant to 3300 loads as it was
15 to 3500 loads, there have been a number of calculations and
16 considerable expense and time devoted to the much higher
17 loads. I don't want to see that happening again. And I
18 think that's a matter of simple equity and fairness, and
19 that's why I made that argument rather strongly.

20 I am not arguing it again if the Board has made a
21 final determination, but I do feel that the comments that
22 the County might have availed itself of an earlier analysis
23 of a lower load, while possibly within the realm of
24 possibility, are not within the realm of probability, and
25 that it would have been an unusual requirement or even

1 expectation for the County, with the resources we have and
2 with the information that was in LILCO's possession and, to
3 some extent, in the Staff's possession, to have concluded
4 any analysis at this time.

5 JUDGE BRENNER: I accept what you say. We are
6 going to stay with our ruling. And I will give you another
7 reason why in a moment.

8 But if I can determine what you're saying, it is
9 that even if we had proceeded solely at the higher loads
10 here, such that the load information would not have been
11 pertinent to the contested proceeding on diesels before us,
12 the County still might have pursued other options as it
13 analyzed and reviewed the final reports of LILCO and the
14 Staff on the proposal to change the load.

15 MR. DYNNER: Yes, sir. And in fact, this is one
16 of the reasons why in our response, we did not object to a
17 supplementary litigation of the lower load issues because we
18 do feel that the litigation so far -- and it is just a
19 matter of realism and fact -- has been applicable.

20 However, if LILCO had not filed its motion and if
21 we had not proceeded in the way we are, it might well have
22 been the County's position -- and frankly, we haven't
23 completed any analysis and I don't know whether 3300 is or
24 is not appropriate. But at the time that we were able to
25 receive that information we might well have filed a new

1 contention and gone through the process, which the
2 regulations and procedures allow us to do, of starting a new
3 contention on the lower qualified load when and if that
4 lower qualified load became relevant through an approved
5 amendment to the FSAR.

6 MR. ELLIS: Judge Brenner, is the Board
7 interested in a response?

8 JUDGE BRENNER: I don't think it is necessary.

9 When we pull all the evidence together there may
10 be a balance-- This is hypothetical at this point because I
11 certainly don't know, but there may be a balance between the
12 safety margins that we see in one context with the lower
13 load as compared to a balance with the safety margins on the
14 diesels as the load is varied. And we want to give
15 ourselves the option of finding that the margin may be too
16 close on the lower loads whereas we see no problem with the
17 diesels at the higher loads.

18 That's a hypothetical, but a possibility. That
19 is one reason why we do not want to pursue the litigation in
20 the form suggested by the County, both as to sequencing and
21 as to precluding the findings on issues.

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

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

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

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 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 ABS -- there
13 was no ABS 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 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 MR. DYNNER: Mr. Ellis's report was accurate.

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

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